

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU : CRIMINAL PART 31

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

Indictment No.  
1910N-2005

MARTIN ROBERT HEIDGEN,

Defendant.  
-----X

Mineola, New York  
August 15, 2006

B E F O R E: HON. ALAN L. HONOROF  
Acting Supreme Court Justice

A P P E A R A N C E S:

HON. KATHLEEN RICE  
District Attorney, Nassau County  
BY: ROBERT HAYDEN, ESQ.  
MAUREEN MCCORMICK, ESQ.  
Assistant District Attorneys  
For the People

STEPHEN LAMAGNA, ESQ.  
666 Old Country Road  
Garden City, New York 11530  
BY: STEPHEN LAMAGNA, ESQ.  
GREGORY MARTELLO, ESQ.  
Attorneys for the Defendant

MINUTES OF JURY TRIAL  
VOL I of V

Christa Flash, R.P.R.  
Official Court Reporter

PA 08/14/15

People v. Heidgen

1 THE CLERK: Indictment number 1910N-2005,  
2 People v. Martin Heidgen.

3 People's appearance, please?

4 MR. HAYDEN: Robert Hayden and Maureen  
5 McCormick for the People, your Honor.

6 THE CLERK: Defense?

7 MR. LAMAGNA: For the defendant, Stephen  
8 LaMagna, 666 Old Country Road, Garden City, New  
9 York.

10 Good afternoon, your Honor.

11 THE COURT: Good afternoon.

12 THE CLERK: The defendant is present, your  
13 Honor. This case is on for hearing.

14 THE COURT: It's on for trial.

15 Would you call it for trial, please?

16 THE CLERK: This case is on for trial.

17 People ready?

18 MR. HAYDEN: People ready, your Honor.

19 THE CLERK: Defendant ready?

20 MR. LAMAGNA: Defendant ready, your Honor.

21 THE COURT: Let's talk about Antommarchi  
22 and Sandoval. Is there a Sandoval issue?

23 MR. HAYDEN: No, your Honor.

24 THE COURT: That's the end of that.

25 Antommarchi?

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1 MR. LAMAGNA: Judge, I've had the  
2 opportunity to explain the law in that area with my  
3 client. We're going to be waiving that.

4 THE COURT: Do we have the written form,  
5 Jean?

6 I'm going to provide you with a written  
7 form. At the moment, Jean will be placing the  
8 defendant under oath.

9 M A R T I N H E I D G E N, after having  
10 been first duly sworn by the Clerk of the Court, was  
11 examined and testified as follows:

12 THE COURT: Mr. Heidgen, are you aware  
13 that it is the law in the State of New York that  
14 during jury selection you have the right to be  
15 present here at the bench in the event there is a  
16 conference between prospective jurors and the  
17 lawyers? Are you aware of that?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: Are you aware your lawyer just  
20 told me you intend to waive or give up that right  
21 and, instead, the procedure would be if there is a  
22 conference at the bench with a prospective juror,  
23 your lawyer will attend that conference and report  
24 back to you the contents of it. Do you understand  
25 that?

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1 THE DEFENDANT: I do, your Honor.

2 THE COURT: Is that what you want to do  
3 following the conference that you had with your  
4 lawyer?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: You understand this is  
7 revocable. By this I mean if you change your mind,  
8 you can revoke the waiver and still have the  
9 opportunity to come up to the bench. Do you  
10 understand that?

11 THE DEFENDANT: I do, your Honor.

12 THE COURT: The waiver is accepted.

13 Mr. LaMagna, if you fill out that  
14 document, please, we'll have it marked as Court  
15 Exhibit I.

16 This case is on trial. It is adjourned  
17 until September 5th for jury selection.

18 Now, Mr. Hayden should put on the record  
19 the conference we had in chambers with respect to  
20 the evidentiary issue.

21 MR. HAYDEN: Yes, your Honor.

22 THE COURT: Please do that.

23 MR. HAYDEN: Yes, your Honor.

24 The People have no intention of  
25 introducing into evidence photographs of the



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1           deceased in this case, Stanley Rabinowitz or  
2           Kathleen Flynn. There might be testimony about  
3           observations made of Katie Flynn and Stanley  
4           Rabinowitz at the scene of the collision, but we  
5           have no intention of introducing photographic  
6           evidence of their dead bodies.

7           THE COURT: Okay.

8           MR. LAMAGNA: Judge, I'm going to have an  
9           application with respect to that issue. From the  
10          discovery material, from what I've received thus far  
11          and pursuant to the testimony at the hearing, there  
12          was some testimony elicited, number one, with  
13          respect to an observation of the child's mother  
14          cradling the child's head at the side of the road.  
15          I would argue that that testimony must be precluded  
16          as being too prejudicial, and the weighing of the  
17          prejudicial value versus the probative value--  
18          certainly the probative value is outweighed by the  
19          prejudice that this jury would have towards my  
20          client.

21                 With any evidence, whether it's  
22          testimonial, whether it's objects, whether it's  
23          photographs or demonstrative evidence, even if  
24          relevant, and I don't even concede that that  
25          particular testimony would be relevant to any

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1 material issue in this case whatsoever, but even if  
2 it were to be relevant, the balancing test of  
3 whether the probative value outweighs the  
4 prejudicial effect of that testimony must be weighed  
5 by the Court. There will be an indelible thought,  
6 an image in the minds of the jury with respect to  
7 that testimony or that issue, that has no bearing  
8 whatsoever on any issue presented in this case.

9 I would argue, and the case law is clear,  
10 that the prejudicial value outweighs the probative  
11 value, and that the Court, in its discretion, will  
12 make rulings commensurate with that issue. There is  
13 nothing with respect to that image that goes to any  
14 facts in this case, and the prejudice that would  
15 endure to my client getting a fair trial and having  
16 this jury get through that image will be  
17 insurmountable.

18 THE COURT: That was one of the reasons I  
19 asked in chambers for a preview, if you will, of  
20 what photographs the People intended to produce with  
21 respect to the victims in this case, and Mr. Hayden  
22 informed us he does not intend to use such  
23 photographs, and let me go to Mr. Hayden and hear  
24 what he has to say.

25 MR. HAYDEN: I'd just like to start off,

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1 your Honor, by reading People v. Poblner, 32 NY2d  
2 356, pages 369 through 370:

3 "It is well-settled that where they are  
4 otherwise properly admitted as having a tendency to  
5 prove or disprove some material fact in issue,  
6 photographs of a corpse are admissible even though  
7 they 'portray a gruesome spectacle and may tend to  
8 arouse passion and resentment against the defendant  
9 in the minds of the jury.'"

10 The Court acknowledges they're talking  
11 about photographs. We don't even intend to offer  
12 photographs in evidence. We're talking about a  
13 central fact of this case. You cannot get around  
14 this fact: Katie Flynn was decapitated. That's the  
15 way she was killed. That fact tends to establish  
16 that she was killed in that head-on motor vehicle  
17 collision. That fact tends to establish that the  
18 defendant behaved with a depraved state of mind.  
19 The observations of Jennifer Flynn clutching Katie's  
20 head in her arms, that's evidence of the fact that  
21 Katie was decapitated. That's the evidence we have.  
22 To distort that evidence would be to distort reality  
23 and to distort the truth. We're not here to do  
24 that, Judge.

25 THE COURT: Let me go a little farther

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1 down that road and see if we can agree on different  
2 points, although related.

3 As I understand the case, and I don't know  
4 all the facts, but as I understand the case, the  
5 mother of the child is supposed to have taken with  
6 her to the hospital, the child's head.

7 MR. HAYDEN: That's correct, your Honor.

8 THE COURT: Would you agree with me that  
9 that would be something that the jury doesn't need  
10 to hear?

11 MR. HAYDEN: Absolutely.

12 THE COURT: All right. And in that case,  
13 as to your application--

14 MR. LAMAGNA: Judge, may I just respond?

15 THE COURT: Yes.

16 MR. LAMAGNA: Sorry. I agree with  
17 Mr. Hayden's case that he cited, People v. Poblner,  
18 but the case stands for the proposition, as it is  
19 articulated in the case, if the sole and only  
20 purpose of the testimony or of the exhibit is to  
21 arouse, in an undeniably inflammatory way, the  
22 emotions of the jury without tending to prove or  
23 disprove any material fact. There is no dispute  
24 that these two individuals died in this car  
25 accident. There is no dispute that these two

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1 individuals died as a result of a head-on collision.  
2 There is no dispute this is how they died. The  
3 manner in which an individual may have perished in a  
4 car accident does not bear upon the mental state of  
5 an individual who was involved in that car accident.

6 THE COURT: Let's approach it this way:  
7 I'm going to ask you and the district attorney to  
8 fashion a stipulation, if you can. Until that time,  
9 unless you cannot, decision is reserved.

10 MR. LAMAGNA: A stipulation as to?

11 THE COURT: As to what you agree or  
12 disagree as to Mr. Hayden's intention to use  
13 testimonial evidence that the mother cradled the  
14 child's head.

15 MS. MCCORMICK: Your Honor, if I might, I  
16 know Mr. Hayden is making the argument, but I'd like  
17 to add something to the Court's consideration and  
18 just inform counsel of what would be necessary as  
19 part of that stipulation.

20 The arrival of the first responding  
21 emergency workers on that scene and their  
22 observation of Mrs. Flynn cradling her daughter's  
23 head is so inextricably woven into the facts of this  
24 case and into the responses of those emergency  
25 workers in what they did and didn't do and weren't

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1           able to do, and there would also be testimony from  
2           the four adults inside the limousine as to  
3           positioning, the movement of the bodies during the  
4           crash, the location of people after the crash. The  
5           attempt to remove these facts from this case would  
6           make it impossible for the witnesses to testify.

7           THE COURT: It's something I'm going to  
8           let the three of you wrestle with unless you require  
9           me to make a decision. Right now I'm reserving  
10          decision in the hope you will be able to agree on  
11          just what the jury should hear between the two  
12          sides. If you cannot, I will help you all out and  
13          make a decision. Between now and then the decision  
14          is reserved.

15          MS. MCCORMICK: Judge, earlier this  
16          morning when we were first here we also had a  
17          discussion with Howard that it would probably be in  
18          the interest of the trial for both defense counsel  
19          and the People to fashion a charge with the new  
20          Feingold language with respect to depraved  
21          indifference.

22          THE COURT: If you can agree, that would  
23          be great. If you cannot agree, each of you give me  
24          a proposed draft and I'll look it over.

25          Thank you. September 5th.

People v. Heidgen

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NASSAU : CRIMINAL PART 31

3 -----x  
4 THE PEOPLE OF THE STATE OF NEW YORK

5  
6 -against-

Indictment No.  
1910N-2005

7 MARTIN ROBERT HEIDGEN,

8 Defendant.  
9 -----x

Mineola, New York  
September 5, 2006

10 B E F O R E: HON. ALAN L. HONOROF  
11 Acting Supreme Court Justice

12 A P P E A R A N C E S:

13  
14 (Same as previously noted.)

15  
16 \* \* \* \*

17  
18 THE CLERK: Case on trial, indictment  
19 number 1910N-05, People v. Martin Heidgen.

20 Appearances, please?

21 MR. HAYDEN: Robert T. Hayden and Maureen  
22 McCormick for the People, your Honor.

23 People ready.

24 MR. LAMAGNA: Steven LaMagna, 666 Old  
25 Country Road, Garden City, New York.

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1 Defendant ready, your Honor.

2 THE CLERK: The defendant is present.

3 THE COURT: Just a couple of comments  
4 before we bring the jury in. As you know, this is  
5 just a prescreening of jurors. This is not voir  
6 dire. This is to find out who can devote this  
7 amount of time, or what we would expect this amount  
8 of time to be, and listen to the charges involving  
9 the kind of injuries that are involved in this case.

10 I note that we have some family members in  
11 the courtroom. I feel for all of you. However, I  
12 must instruct you that at no time, please, ever  
13 approach a juror in this case under any  
14 circumstances. Please don't do that. I suggest  
15 that you also refrain from contact from one family  
16 to another. I don't see what good can come of that.  
17 So until this trial is over, please keep to  
18 yourselves, if you can.

19 At this point please produce the jury.

20 MR. LAMAGNA: Judge, before we do that--  
21 I'm sorry-- I was just informed by my client that he  
22 did not get access to his clothing that his mom  
23 brought to the jail for the purposes of trial, and,  
24 secondly, he requested to shave last night and this  
25 morning, and that was denied. Obviously, we know



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1           that's important, and he should be having access to  
2           his clothes.

3           THE COURT: I will see what I can do, but  
4           at the moment we're going to--

5           MR. LAMAGNA: I understand for today.

6           THE COURT: I'll see what I can do to  
7           help.

8           MR. LAMAGNA: Thank you.

9           (Whereupon, the prospective jury panel  
10          entered the courtroom.)

11          THE CLERK: Case on trial, indictment  
12          number 1910N-2005, People v. Martin Robert Heidgen.

13          People ready?

14          MR. HAYDEN: People are ready, your Honor.

15          THE CLERK: Defendant ready?

16          MR. LAMAGNA: Defendant is ready, your  
17          Honor.

18          THE COURT: Good morning, ladies and  
19          gentlemen. I am going to tell you a little bit  
20          about this case. I'm going to give you the option  
21          to serve in this trial or not.

22          This case involves the charge of murder in  
23          the second degree. In this case you will hear of  
24          some terrible injuries. However, there will be no  
25          photographs. You will hear about the

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1 alcohol-related drunk-driving deaths of a man by  
2 blunt force trauma and a young child by  
3 decapitation. The case may last as long as five  
4 weeks. It's possible, although I have not yet  
5 decided, that during deliberations the jury may be  
6 sequestered in a hotel.

7 Due to the nature of the case and the time  
8 commitment I've just discussed with you, we are  
9 allowing the decision as to whether you choose to be  
10 screened up to you. If you choose not to be  
11 screened, which is your right now, you will go back  
12 to central jury. You will be screened for other  
13 juries. None of them will involve a murder. Some  
14 of them might last longer. If you choose to be  
15 screened for this case, the Court staff will give  
16 you further instructions.

17 This case has gotten and will continue to  
18 receive media attention. Please do not discuss the  
19 case if you are approached by the media.

20 The Court staff will now give you further  
21 instructions.

22 (Whereupon, a brief recess was taken.)

23 (Whereupon, the prospective jury panel  
24 entered the courtroom.)

25 THE CLERK: Case on trial, indictment

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1 number 1910N-05, People v. Martin Heidgen.

2 The People are present, the defendant is  
3 present and defense counsel is present, your Honor.

4 THE COURT: Thank you.

5 Good morning, ladies and gentlemen. My  
6 name is Alan Honorof. I am a judge in the Supreme  
7 Court part in relation to a criminal case which is  
8 starting now.

9 This jury selection is going to be a  
10 little bit off the beaten track in that I'm going to  
11 give you your choice as to whether or not to be  
12 screened for jury duty on this case. In order to do  
13 that, I have to tell you a little bit about this  
14 case.

15 This case involves murder in the second  
16 degree. In this trial the jury will hear about  
17 gruesome and terrible injuries, but there will be no  
18 photographs. You will hear-- the jury will hear  
19 about the alcohol-related drunk-driving deaths of a  
20 man by blunt force trauma and to a young child by  
21 decapitation.

22 The case may last as long as five weeks.  
23 It is possible, although I haven't yet decided, that  
24 during the jury's deliberations they may be  
25 sequestered at a hotel. I'm not sure about that

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1 yet.

2 Due to the nature of the case and the time  
3 commitment involved, we're allowing the decision as  
4 to whether you choose to be screened to serve on  
5 this jury up to you. If you choose not to be  
6 screened, you will go back to central jury and be  
7 screened for other juries. They will not involve  
8 murder. They might last longer. If you choose to  
9 be screened, my staff will give you further  
10 instructions.

11 This case has gotten and will continue to  
12 receive attention from the media. If you are  
13 approached by the media, please do not discuss any  
14 aspect of this case with them.

15 My court staff will now take over.

16 (Whereupon, a luncheon recess was taken.)

17  
18 \* \* \* A F T E R N O O N S E S S I O N \* \* \*

19  
20 THE CLERK: Case on trial, indictment  
21 number 1910-05, People v. Martin Heidgen.

22 People ready?

23 MR. HAYDEN: Ready, your Honor.

24 THE CLERK: Defendant ready?

25 MR. LAMAGNA: Defendant ready, your Honor.

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1 THE CLERK: The defendant is present, your  
2 Honor.

3 THE COURT: Thank you.

4 Would you produce the jury, please?

5 (Whereupon, the prospective jury panel  
6 entered the courtroom.)

7 THE CLERK: Case on trial, indictment  
8 1910N-05, People v. Martin Heidgen.

9 People ready?

10 MR. HAYDEN: People are ready, your Honor.

11 THE CLERK: Defendant ready?

12 MR. LAMAGNA: Defendant is ready, your  
13 Honor.

14 THE CLERK: The defendant is present, your  
15 Honor.

16 THE COURT: Thank you.

17 Good afternoon, ladies and gentlemen.

18 This is jury selection in a case that is a little  
19 bit unusual in that I'm going to give you an option  
20 to opt out of the trial. You will not be excused  
21 from jury duty. If you opt out of the trial, you'll  
22 be assigned to a different case.

23 This case involves a charge of murder in  
24 the second degree. In this case those people who  
25 are selected as jurors will hear of some gruesome

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1 and terrible injures. There will be no photographs  
2 of those injuries. This case is about an  
3 alcohol-related drunk-driving death of a man by  
4 blunt force trauma and a young child by  
5 decapitation.

6 The case may last five weeks. It's  
7 possible, and I have not yet made this decision, but  
8 it is possible that the jury who hears this case  
9 will be sequestered during their deliberations at a  
10 hotel.

11 Due to the nature of the case and the time  
12 commitment, I'm allowing the decision as to whether  
13 you choose to be screened to serve up to you. If  
14 you choose not to serve, you will be taken back to  
15 central jury and screened there for another case.  
16 It will not be a murder case. It could last longer  
17 than this. If you choose to be screened, my court  
18 staff will give you further instructions.

19 This case has gotten media attention. It  
20 will continue to get media attention. If you are  
21 approached by the media and are asked about this  
22 case, please do not discuss it with them.

23 I am now going to turn the proceedings  
24 over to my court staff.

25 (Whereupon, the Court stood in recess for

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the day.)

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People v. Heidgen

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September 6, 2006

10 B E F O R E: HON. ALAN L. HONOROF  
11 Acting Supreme Court Justice

12 A P P E A R A N C E S:

13  
14 (Same as previously noted.)

15  
16 \* \* \* \*

17  
18 (Whereupon, the prospective jury panel  
19 entered the courtroom.)

20 THE CLERK: Case on trial, indictment  
21 number 1910N-05, People v. Martin Heidgen.

22 People ready?

23 MR. HAYDEN: People are ready, your Honor.

24 THE CLERK: Defendant ready?

25 MR. LAMAGNA: Defendant ready, your Honor.



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1 THE CLERK: The defendant is present, your  
2 Honor.

3 THE COURT: Thank you. Good morning,  
4 ladies and gentlemen. My name is Alan Honorof. I  
5 am the judge here in the Supreme Court part in  
6 relation to the criminal trial which is about to  
7 commence.

8 This jury selection is going to be  
9 different, at least this part, than in most jury  
10 selections.

11 Can everybody hear me?

12 This case involves the charge of murder in  
13 the second degree. In this case those people  
14 selected as the jury will hear of gruesome and  
15 terrible injuries. There will be no photographs of  
16 those injuries. This case involves the alleged  
17 alcohol-related drunk-driving deaths of a man by  
18 blunt force trauma and a young girl by decapitation.

19 The case may last as long as five weeks.  
20 It's possible, and there has not been a decision  
21 made on this yet, but I am telling you now that it  
22 is possible that during deliberations I may  
23 sequester the jury at a hotel.

24 Due to the nature of the case and the time  
25 commitment involved, I am allowing the decision as

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1 to whether or not you choose to be screened for this  
2 case up to you. If you choose not to be screened,  
3 you'll simply go back to the Supreme Court where you  
4 will be screened for another case. The case could  
5 last longer, but it will not be a murder case. If  
6 you choose to be screened, the Court staff will give  
7 you further instructions.

8 This case has gotten media attention. It  
9 will continue to receive media attention. If you  
10 are approached by the media, please do not discuss  
11 the case with them.

12 At this point I'm turning the proceedings  
13 over to my staff.

14 (Whereupon, a recess was taken.)

15 (Whereupon, the jury panel entered the  
16 courtroom.)

17 THE CLERK: Case on trial, indictment  
18 number 1910N-05, People v. Martin Heidgen.

19 People ready?

20 MR. HAYDEN: People ready, your Honor.

21 THE CLERK: Defendant ready?

22 MR. LAMAGNA: Defendant is ready, your  
23 Honor.

24 THE CLERK: Defendant is present, your  
25 Honor.

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1 THE COURT: Thank you.

2 Good morning, ladies and gentlemen. My  
3 name is Alan Honorof. This jury selection is going  
4 to be commenced in a little bit of an unorthodox  
5 manner in a sense that I am giving everyone an  
6 option to leave the courtroom, to leave this jury  
7 panel.

8 This case involves a charge of murder in  
9 the second degree. In this case the jury will hear  
10 of gruesome and terrible injuries. They will not  
11 see any photographs. The case involves the alleged  
12 alcohol-related drunk-driving deaths of a man by  
13 blunt force trauma and a young child by  
14 decapitation.

15 The case may last as long as five weeks.  
16 The jury might be sequestered during their  
17 deliberations. I haven't made that decision yet.  
18 Due to the nature of the case and the time  
19 commitment involved, I am allowing the decision as  
20 to whether you choose to be screened to serve on  
21 this jury panel up to you. If you choose not to  
22 serve on this panel, you will be taken back to  
23 central jury, and you will be screened for another  
24 case. It will not be a murder case. It could last  
25 longer. If you choose to be screened, the Court

People v. Heidgen

1 staff will give you further instructions.

2 This case has received media attention.

3 It will continue to receive media attention. If you  
4 are approached by members of the media, please do  
5 not discuss the case with them.

6 I am turning the proceedings over to my  
7 staff.

8 (Whereupon, a recess was taken.)

9 (Whereupon, the prospective jury panel  
10 entered the courtroom.)

11 THE CLERK: Case on trial, indictment  
12 number 1910N-05, People v. Martin Heidgen.

13 People ready?

14 MR. HAYDEN: The People are ready, your  
15 Honor.

16 THE CLERK: Defendant ready?

17 MR. LAMAGNA: Defendant is ready, your  
18 Honor.

19 THE CLERK: The defendant is present, your  
20 Honor.

21 THE COURT: Thank you.

22 Good morning, ladies and gentlemen. This  
23 is supposed to be jury selection. My name is Alan  
24 Honorof. We're going to start a criminal case;  
25 however, this will be slightly different. I am

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1 going to give everyone in the room the opportunity  
2 to leave this jury panel.

3 This case involves the charge of murder in  
4 the second degree. The jury in this case will hear  
5 of gruesome and terrible injuries. They will not  
6 see any photographs. The jury will hear of the  
7 alleged alcohol-related drunk-driving deaths of a  
8 man by blunt force trauma and by a young child by  
9 decapitation.

10 The case may last as long as five weeks.  
11 It's possible, and I have not yet decided this,  
12 during the deliberations the jury may be sequestered  
13 in a hotel room. Due to the nature of the case and  
14 the time commitment involved, I am leaving the  
15 decision as to whether you choose to be screened to  
16 be on this jury up to you. If you choose not to  
17 serve on this panel, you will be taken back to  
18 central jury, and you will be screened for another  
19 case. It will not be a murder case. It could last  
20 longer. If you choose to stay and be screened, my  
21 staff will give you further instructions.

22 This case has received media attention.  
23 It will continue to receive media attention. If the  
24 media approaches you about this case, please do not  
25 discuss the case with them.

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1 My staff will take over at this point.

2 (Whereupon, a recess was taken.)

3 (Whereupon, the prospective jury panel  
4 entered the courtroom.)

5 THE CLERK: Case on trial, indictment  
6 number 1910N-05, People v. Martin Heidgen.

7 People ready?

8 MR. HAYDEN: The People are ready, your  
9 Honor.

10 THE CLERK: Defendant ready?

11 MR. LAMAGNA: Defendant ready, your Honor.

12 THE CLERK: The defendant is present, your  
13 Honor.

14 THE COURT: Thank you.

15 Good afternoon, ladies and gentlemen. My  
16 name is Alan Honorof.

17 This is jury selection in the case you've  
18 just heard called. This jury selection is going to  
19 be a little different than what would normally take  
20 place.

21 This case involves the charge of murder in  
22 the second degree. In this case the jury will hear  
23 of gruesome and terrible injuries. They will not  
24 see any photographs. The jury in this case will  
25 hear of the alleged alcohol-related drunk-driving

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1 deaths of a man by blunt force trauma and by a young  
2 child by decapitation.

3 The case may last five weeks. The jury  
4 may be sequestered in a hotel during their  
5 deliberations. Due to the nature of the case and  
6 the time commitment involved, I am allowing the  
7 decision as to whether or not you choose to be  
8 screened in this case up to you. If you choose not  
9 to serve on this case, you will be taken back to  
10 central jury and you will be screened for another  
11 case. It will not be a murder case. It might last  
12 fewer or longer days or weeks than this case.

13 This case has received media attention.  
14 It will receive more media attention. If you are  
15 approached by members of the media, please do not  
16 discuss this case with them.

17 I am now going to turn these proceedings  
18 over to my staff.

19 (Whereupon, a recess was taken.)

20 (Whereupon, proceedings continued in the  
21 Judge's chambers.)

22 THE COURT: Mr. Hayden, Ms. McCormick,  
23 explain to me what this is all about.

24 MR. HAYDEN: Certainly, your Honor.

25 We obtained copies of letters that the

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1 defendant sent to a friend, and in the course of  
2 those letters he mentioned a particular letter that  
3 was sent to Mr. Zigman in which he talked about  
4 using certain movies to prepare a defense in this  
5 case. We prepared a subpoena for Mr. Zigman asking  
6 for production of that letter. In the course of the  
7 previous letters he referred to another potential  
8 witness in that letter in the possession of  
9 Mr. Zigman.

10 We prepared a subpoena for Mr. Zigman.  
11 That subpoena was prepared this morning. It was  
12 served on Mr. Zigman, and I've just been informed  
13 Mr. Zigman tells us that he doesn't have that letter  
14 any longer.

15 THE COURT: Would you please put your name  
16 and address on the record.

17 MR. ZIGMAN: Joshua Zigman, Z-I-G-M-A-N,  
18 225 Rector Place, New York, New York.

19 THE COURT: Would you stand up,  
20 Mr. Zigman?

21 Do you swear the evidence you are about to  
22 give will be the truth so help you God?

23 MR. ZIGMAN: I do.

24 THE COURT: Sit down.

25 Do you know the letter the district



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1 attorney is referring to?

2 MR. ZIGMAN: I do.

3 THE COURT: Do you have it?

4 MR. ZIGMAN: I don't.

5 THE COURT: Do you know where it is?

6 MR. ZIGMAN: It's gone. I threw it out a  
7 long time ago when I moved into my new apartment.

8 THE COURT: All right. I'm ordering you  
9 to look for it.

10 MR. ZIGMAN: Okay.

11 THE COURT: If you locate it or know where  
12 it is, it is to be produced or its whereabouts made  
13 known to the Court. If it turns out that you are  
14 not being forthcoming and candid about what we are  
15 now talking about, that will constitute grounds for  
16 application by the District Attorney's Office to  
17 hold you in contempt of Court. I assure you, sir, I  
18 will grant that application, which will result in  
19 you being most likely incarcerated.

20 MR. ZIGMAN: I understand.

21 THE COURT: Okay. Thank you.

22 MS. MCCORMICK: Pardon me, your Honor.

23 The witness lives with another person, who was also  
24 subpoenaed and has also made a claim that the letter  
25 requested does not exist.

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1 THE COURT: Where is that person?

2 MS. MCCORMICK: That person is not here,  
3 which is what I was verifying. We will bring him  
4 before the Court. I should note for the record,  
5 Judge, that the reference in this letter, and why  
6 the People believed that Mr. Zigman would have the  
7 letter, is that there was a specific reference made  
8 that the defendant did not have a copy machine and  
9 that he was requesting people, other associates,  
10 other friends, to see Mr. Zigman to see this letter.  
11 So we had every reason to believe that the letter  
12 was still in existence and, frankly, still is in  
13 existence.

14 THE COURT: Well, Mr. Zigman is going to  
15 give it his best shot finding it, I assure you.

16 MR. ZIGMAN: I certainly will.

17 That's it?

18 THE COURT: That's it.

19 MR. ZIGMAN: Thank you.

20 (Whereupon, proceedings continued in open  
21 court.)

22 (Whereupon, the prospective jury panel  
23 entered the courtroom.)

24 THE CLERK: Case on trial, indictment  
25 number 1910N-2005, People v. Martin Heidgen.

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1 People ready?

2 MR. HAYDEN: Ready, your Honor.

3 THE CLERK: Defense ready?

4 MR. LAMAGNA: Defendant is ready, your  
5 Honor.

6 THE CLERK: The defendant is present, your  
7 Honor.

8 THE COURT: Thank you.

9 Good afternoon, ladies and gentlemen. My  
10 name is Alan Honorof. Ordinarily, we would be  
11 proceeding to give you certain instructions then  
12 have you come up here in the box, but this case is a  
13 little bit off the beaten track for that. So if you  
14 just pay attention to me, I'm going to give you some  
15 information.

16 Can everybody hear me?

17 This case involves the charge of murder in  
18 the second degree. The jury who hears this case  
19 will hear about gruesome and terrible injuries. The  
20 jury who hears this case will hear of the alleged  
21 alcohol-related drunk-driving deaths of a man by  
22 blunt force trauma and of a young child by  
23 decapitation.

24 The case might last five weeks. I have  
25 not yet decided, but the jury might be sequestered

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1 in a hotel during their deliberations. Due to the  
2 nature of the case and the time commitment involved,  
3 I'm allowing the decision as to whether you choose  
4 to be screened to serve in this case up to you. If  
5 you choose not to serve on this panel, you'll be  
6 taken back to the Central Jury. You will be  
7 screened for another case. The case will not be a  
8 murder case. The case might be shorter, it might be  
9 longer. If you choose to be screened for this case,  
10 my clerk will give you additional instructions.

11 This case has received attention from the  
12 media. It will receive additional attention from  
13 the media. If you are approached by the media about  
14 this case, please do not speak with them.

15 My staff will now take over.

16 (Whereupon, a recess was taken.)

17 THE COURT: Are there any applications?

18 MR. LAMAGNA: Yes, Judge.

19 I received today some subpoenaed materials  
20 in the nature of certain letters that allegedly were  
21 made by Mr. Heidgen to, I believe, Amanda Goldman.  
22 I do not know what the district attorney's intention  
23 is with respect to those, however, but I would  
24 object to their use on their direct case, certainly  
25 in that I had again asked for those materials in my

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1           discovery demands dated September 20, 2005, and  
2           Amanda Goldman is certainly not a witness, though  
3           she is relevant to this case. This was the actual  
4           person whose home this party was at.

5                   THE COURT: What exactly did you request,  
6           theoretically, from Amanda Goldman?

7                   MR. LAMAGNA: I didn't request anything  
8           from Amanda Goldman.

9                   THE COURT: I'm saying in terms of your  
10          request, what did you contemplate an Amanda Goldman  
11          person to be producing?

12                   MR. LAMAGNA: I requested from the  
13          District Attorney's Office in my discovery demands  
14          any statements made by my client, number one, to any  
15          law enforcement. Number two--

16                   THE COURT: We agree she's not law  
17          enforcement.

18                   MR. LAMAGNA: We do.

19                   THE COURT: And?

20                   MR. LAMAGNA: And, number two, to any  
21          civilian witnesses, any statements that my client  
22          may have made to any civilians, if they intend to  
23          use those statements, and if they do intend to use  
24          those statements, what were they, who were they made  
25          to, and, furthermore, whether they were inculpatory

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1 or exculpatory.

2 THE COURT: Please hold on. You agree  
3 those demands were made by Mr. LaMagna as he says,  
4 either one of you?

5 MR. HAYDEN: I haven't reviewed his demand  
6 recently, your Honor. I'm not certain that's what  
7 he demanded. I'm certain we didn't become aware of  
8 these letters until just recently, I'm talking about  
9 within days.

10 THE COURT: I was going to get to that,  
11 but I'm trying to get to Mr. LaMagna's point that  
12 the demand was made. It's reasonable to agree, is  
13 it not, Mr. Hayden, Miss McCormick, it's reasonable  
14 he would have made such demand because it's a common  
15 demand to make?

16 MR. HAYDEN: Yes. We're not at all  
17 conceding he's entitled to everything in that  
18 request.

19 THE COURT: You are conceding it's more  
20 than likely he made that demand, and it's reasonable  
21 to assume he did?

22 MR. HAYDEN: If Mr. LaMagna represents  
23 that to the Court, we would accept his  
24 representation.

25 MR. LAMAGNA: I have the demand in my

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1 hand.

2 THE COURT: I'm sure you do.

3 MR. LAMAGNA: Now, there has been, over  
4 the course of time in leading up to today, various  
5 pieces of evidence that have come in, in my view,  
6 inexcusably late to the defense by the prosecution,  
7 whether they were statements precluded pursuant to  
8 710.30, which Judge Donnino had actually dealt with,  
9 whether they're search warrants, whether they're  
10 tapes, all of these things that should have been  
11 done for the last year pursuant to their  
12 investigation of this case.

13 The purpose of discovery and the time  
14 limits for such discovery is to give the defendant  
15 knowledge of what the evidence is against him so  
16 that he can adequately and in a timely manner  
17 prepare a defense for the case. We are now on  
18 trial, we started jury selection, and now I have  
19 letters written, or allegedly written, by my client  
20 to this Amanda Goldman, who they have known all  
21 these kids were interviewed, I believe, months ago  
22 and they knew this.

23 Now, my position is simply I don't know  
24 when they plan on using them, but certainly on their  
25 direct case, anything that's in their possession, it

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1 is just too late. We have prepared our defense  
2 based upon what we were given by the prosecution as  
3 evidence that they will use in their direct case  
4 against my client. This case has been going on for  
5 a year.

6 THE COURT: Give me a moment, please.

7 (Whereupon, a brief recess was taken.)

8 THE COURT: The same way, Mr. LaMagna, you  
9 don't dispute or Mr. Hayden does not dispute the  
10 fact that you made such a demand, do you dispute the  
11 prosecutor's representations that these items have  
12 only been recently, a day or so, received?

13 MR. LAMAGNA: Yes, Judge. I was actually  
14 getting to that point.

15 The fact that the prosecution has now just  
16 asked for those materials or if they just thought of  
17 subpoenaing those materials is of no moment to the  
18 prejudice that my client is going to enure. We've  
19 prepared our defense based upon the discovery we  
20 received.

21 THE COURT: Are you asking for an offer of  
22 proof?

23 MR. LAMAGNA: No. What I'm saying is--

24 THE COURT: Wouldn't you like one, though?  
25 Good idea, since you don't know what they want to



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1 use it for?

2 MR. LAMAGNA: That is true.

3 THE COURT: I don't either. Why don't we  
4 find that out, then we'll know whether or not your  
5 objection is necessary to address.

6 MR. LAMAGNA: Okay. I agree, Judge.

7 THE COURT: Offer of proof?

8 MR. HAYDEN: I'd just like to put some  
9 facts on the record so they're there.

10 First of all, the Goldmans, Justin,  
11 Amanda, their parents, refused to speak with  
12 investigators or us for months and months. It was  
13 only after I spoke with their attorney, Marvin  
14 Hirsch, that he made arrangements for us to speak  
15 with Amanda Goldman. It was only when we spoke with  
16 Amanda Goldman just a week or so ago that we learned  
17 of the existence of these letters. We immediately  
18 then went and prepared subpoenas for the Court's  
19 signature to order production, not to us, but to the  
20 Court.

21 We have no intention of using the contents  
22 of the letters on our direct case, but we have every  
23 intention of using the contents of the letters,  
24 where appropriate, during cross-examination of the  
25 defendant.

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1 THE COURT: Well, to me, Mr. LaMagna, that  
2 sounds like a reasonable position for the People to  
3 take.

4 MR. LAMAGNA: Judge, I'm glad we have  
5 clarity, at least, on that issue. However, Amanda  
6 Goldman is such a central figure in the case in that  
7 that is the home where this party was.

8 THE COURT: If she refused to speak with  
9 him until Marvin said it was okay--

10 MR. LAMAGNA: My point is they spoke to  
11 their attorney two weeks ago to do all this. They  
12 could have done this eleven months ago.

13 THE COURT: Let me ask you this:  
14 Certainly the fact that he wrote to Amanda was known  
15 to your client. Certainly Amanda was equally within  
16 your capability to interview as well as the  
17 prosecutor. The witness is not necessarily, in  
18 fact, not at all, under the People's dominion or  
19 control. The witness is equally available to both  
20 of you, and you, Mr. LaMagna, in fact, is in the  
21 superior position because the knowledge was unique  
22 to your client that he had written letters to her  
23 and certainly he knew what he wrote.

24 MR. LAMAGNA: However, it is the  
25 prosecution that has the burden of proof.

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1 THE COURT: There's no question about  
2 that. I'm talking about the equal availability of  
3 witnesses.

4 MR. LAMAGNA: But I'm not planning on  
5 using them. What I'm saying--

6 THE COURT: I didn't think so.

7 MR. LAMAGNA: What I'm saying is that's  
8 why there are statutes dealing with discovery and  
9 timeliness, so that we, as the defendant who is  
10 defending the charges, can have an idea of what they  
11 are going to be using, whether it be on their direct  
12 case--

13 THE COURT: Let me do this: Every time I  
14 read these statutes, at the very bottom in little  
15 fine print it always says at the discretion of the  
16 Court. It always says that. When it says that, it  
17 usually gives you an opportunity to avoid the  
18 terrible surprise that has just occurred to have an  
19 adjournment of these proceedings. Do you want the  
20 case adjourned for a day?

21 MR. LAMAGNA: I don't want the case  
22 adjourned.

23 THE COURT: There you go. Now, the  
24 People's position being reasonable, what is your  
25 request?

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1 MR. LAMAGNA: My request is for the Court,  
2 based upon this late stage of these proceedings, to  
3 exercise its discretion, given--

4 THE COURT: I view it the other way.

5 MR. LAMAGNA: --to exercise its discretion  
6 in this particular case, given where we are, to  
7 preclude any use of this. I understand on their  
8 direct case it's a moot issue. They're not planning  
9 on using it.

10 THE COURT: That's a good thing to know,  
11 right?

12 MR. LAMAGNA: Yes. But even on their--  
13 even on cross-examination, now we have to rethink at  
14 this late stage of these proceedings, where we're on  
15 trial, trial strategy with respect to my client.

16 THE COURT: The one thing I learned in  
17 trying cases and in listening to cases now as a  
18 judge over the last 32 years, these things are real  
19 fluid. They change minute by minute, and as a trial  
20 lawyer, the good ones react to these changes  
21 instantly, and I know I'm dealing with good ones.  
22 So that's why I'm denying your application.

23 MR. LAMAGNA: You know, Judge, that's the  
24 opinion of the Court and that's your judgment.

25 THE COURT: Hold on one minute.

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1 (Whereupon, there was a pause in the  
2 proceedings.)

3 THE COURT: Incidentally, just so the  
4 record is clear, I've read all of these letters.  
5 Some of them were as recent as April.

6 MR. LAMAGNA: I have not read through all  
7 of them, I must say.

8 THE COURT: My opinion earlier was to  
9 provide them to both of you so you'll have them.

10 MR. LAMAGNA: Judge, I received them this  
11 morning. I have not gotten through them all.  
12 However, what I would ask the Court, then, if you're  
13 going to allow some of the contents of those letters  
14 to be used for cross-examination purposes of my  
15 client--

16 THE COURT: I presume for impeachment  
17 purposes, otherwise, it's a nonissue. Otherwise  
18 it's just paper.

19 MR. LAMAGNA: I would ask, then, for the  
20 prosecution to articulate with specificity what  
21 parts of those letters--

22 THE COURT: He might deny his name is  
23 Marty. You've got to wait and see.

24 MR. LAMAGNA: We can agree, then, however,  
25 at least any articulations about anything that he

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1 was planning or going to do in the future when he  
2 gets out or anything is not germane to this?

3 THE COURT: I promise that when an  
4 objection is made, I will sustain those that are  
5 irrelevant, or I will sustain according to my  
6 thinking at that time, and being that there's no  
7 objection before me at present, it's difficult to  
8 rule on it.

9 MR. LAMAGNA: All right. The ruling would  
10 be--

11 THE COURT: Wait and see.

12 MR. LAMAGNA: In spite of the application.

13 THE COURT: In spite of-- the ruling on  
14 your application is denied. The preruling on  
15 objections is also denied.

16 MR. LAMAGNA: Judge, also, if we can, just  
17 so the record is complete, I know we've had various  
18 discussions amongst the lawyers and the Court on the  
19 issue of the testimony of the decapitation of the  
20 child.

21 THE COURT: I'm going to allow, within  
22 limits, a description of the scene that the first  
23 responders came upon and, to an extent, the  
24 testimony of the mother regarding the first moments  
25 following the incident until such time as first

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1 responders came to her assistance.

2 MR. LAMAGNA: Judge, just with respect to  
3 me understanding that, I've received a witness list  
4 this morning. There potentially could be over ten  
5 witnesses on that list who could maybe articulate  
6 those issues.

7 THE COURT: I asked you earlier off the  
8 record if all of you could agree to stipulate as to  
9 the chain of custody and eliminate eight of these  
10 witnesses. Can you do that?

11 MR. LAMAGNA: I've spoken to my client and  
12 his family, and there will be no stipulation on  
13 that.

14 THE COURT: No stipulation. Okay.

15 MR. LAMAGNA: On the chain of custody and  
16 police witnesses.

17 However, I did mention to Miss McCormick  
18 earlier with respect to-- there's a list of doctors  
19 or physicians or care providers that provided  
20 subsequent care to the victims in this case. I said  
21 I would stipulate to the serious physical injury  
22 they're going to testify to.

23 THE COURT: Let me ask you this, because--  
24 I'm asking the People this. Out of the ten doctors  
25 listed on the witness list, are any of those doctors

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1 the doctors who performed the autopsies of the child  
2 and the older gentleman?

3 MS. MCCORMICK: Yes, Judge.

4 THE COURT: Can you stipulate those  
5 results are not necessary? Is that something you  
6 want necessarily to have in front of this jury or  
7 can we stipulate to what those doctors would say?

8 MR. LAMAGNA: Judge, can I just--

9 THE COURT: Or are the People not  
10 willing--

11 MR. HAYDEN: The People will call the  
12 medical examiner. The testimony will be relatively  
13 brief.

14 THE COURT: I guess that's that.

15 All right. I will urge you to stipulate  
16 to those things that are inescapable. There's no  
17 reason to prolong this trial.

18 MR. LAMAGNA: That's why, with respect to  
19 the doctors who treated the victims for the last  
20 year or so, I would ask for that stipulation.

21 THE COURT: You know what? Maybe you've  
22 got some horses to trade.

23 (Whereupon, a brief recess was taken.)

24 THE CLERK: Case on trial, indictment  
25 number 1910N-05, People v. Martin Heidgen. People



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1 are present. The defendant is present. Defense  
2 counsel is present, your Honor.

3 THE COURT: Thank you.

4 Applications?

5 MS. MCCORMICK: Yes, your Honor.

6 After the last on-the-record exchange, I  
7 raised with your law secretary, Howard Sturim, in a  
8 hope not to slow down the trial when it occurs-- the  
9 Court has been very clear you don't want to deal  
10 with objections until they occur, but the nature of  
11 this testimony that I'm proposing I thought might be  
12 something that the Court might want to consider  
13 ahead of time.

14 THE COURT: The expert witness on the  
15 question of tolerance.

16 MS. MCCORMICK: The People were intending  
17 to call Dr. Closson, a toxicologist, to testify as  
18 to the effects of alcohol and tolerance.

19 THE COURT: First off, let's see if  
20 there's an objection.

21 MR. LAMAGNA: That's the issue. With  
22 respect to the issue of tolerance, I do have an  
23 objection.

24 THE COURT: All right. The objection is  
25 overruled. The question of tolerance is one that I

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1 think the jury is entitled to know about and should  
2 know about, so I'm going to allow it.

3 MR. LAMAGNA: Judge, just for the record,  
4 I want to make my objection. From what I  
5 understand, from talking with the prosecution, the  
6 issue of tolerance is going to relate and infer to  
7 this jury in this case that my client drinks a lot.

8 THE COURT: I was afraid of the same thing  
9 when I first heard the application, not just this  
10 second, when I dealt with it earlier this afternoon.  
11 I think that on the question of intoxication and the  
12 effects of alcohol on people that it is relevant  
13 testimony without necessarily referring your client  
14 is either a regular drinker or an alcoholic.  
15 Certainly were the testimony starting to head down  
16 that road and cast that dispersion, I would not  
17 permit that kind of testimony.

18 But in terms of education value for the  
19 jury, so they understand the effects of alcohol with  
20 someone who drinks on a regular basis as compared to  
21 someone who drinks infrequently or never, I think  
22 it's relevant testimony, and I think it's of value  
23 to this jury to decide on those issues.

24 MR. LAMAGNA: I suspect that, I could be  
25 wrong, but I suspect that after that testimony we

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1 are going to hear on summation that based upon his  
2 level, my client was a heavy drinker.

3 THE COURT: So we will agree--

4 MR. LAMAGNA: That is what I'm afraid of.  
5 I believe that is going to happen in this case, and  
6 that is prejudicial.

7 THE COURT: First of all, in the absence  
8 of other testimony tending to link your client to  
9 the use of alcohol, I would never allow it, and I  
10 don't imagine that I know what the testimony is  
11 going to be, but it's not unreasonable to believe  
12 that since there was some kind of a party at which  
13 the defendant was present-- I've heard through both  
14 of your applications on these various points that  
15 alcohol was being served at that party-- that the  
16 defendant may have been drinking some of that  
17 alcohol.

18 Certainly other people at that party were  
19 drinking alcohol. Certainly some of these people  
20 saw and heard and observed and participated in what  
21 was going on. If that kind of testimony comes in,  
22 then I will allow the district attorney appropriate  
23 comment on it, but if there is no such testimony,  
24 then the district attorney would not be able to  
25 comment.

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1 MR. LAMAGNA: For clarity, that I agree  
2 with. I believe that if that happens, comment can  
3 be made with respect to the evidence that was  
4 presented by the People who were able to observe and  
5 saw and all of those things.

6 However, what my problem with the  
7 tolerance issue is is if a toxicologist testifies  
8 and indicates to the jury what the effects of  
9 alcohol does to an individual and how it affects  
10 their perception and coordination and dexterity and  
11 all those things, that's one thing. But to  
12 articulate that in a situation like in this case, a  
13 person who drinks a lot can have this reading and do  
14 all these things, they are inferring, and I  
15 guarantee you they're going to argue that on  
16 summation and we're done, the issue of tolerance is  
17 going to infer to this jury a propensity of prior  
18 conduct by my client that he drinks a lot, and in  
19 this case that is too prejudicial versus whatever  
20 probative value there may be, and, again, I ask for  
21 what their expert is going to say.

22 THE COURT: If I was going to guess about  
23 this stuff and imagine myself in the shoes of the  
24 prosecution, I don't know that I would want to put  
25 on or suggest to the jury that there was such heavy

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1 drinking going on that the defense of intoxication  
2 could be more easily relied upon. So you're both  
3 walking a pretty fine line.

4 MR. LAMAGNA: I think their argument is  
5 just the opposite. Their argument is going to be  
6 that he is a heavy drinker, has been a heavy  
7 drinker, is a consistently heavy drinker, that's why  
8 they're putting that expert on for tolerance.  
9 That's what this jury is going to hear. That's  
10 what's wrong. That's what I object to. If he wants  
11 to testify how alcohol, especially a high level, can  
12 affect a person mentally or physically, that I agree  
13 with.

14 THE COURT: We can agree on, all the  
15 lawyers and I, that alcohol affects people in  
16 different ways, and it affects people particularly  
17 in different ways if they are light, casual, social  
18 teetotalers or heavy drinkers. That same amount of  
19 alcohol would affect each one of those people in a  
20 different way.

21 MR. LAMAGNA: Then what would the effect  
22 of that evidence be? To suggest my client is a  
23 heavy drinker. That's exactly why I'm objecting to  
24 that line of testimony. If he wants to testify as  
25 to what alcohol does to the system, I have no

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1 problem with that, but if it's exactly as you  
2 articulated, which is what I believe is going to  
3 happen, that is exactly my feeling, and that is why  
4 we will not get a fair trial if that kind of  
5 testimony comes out, because, again, they're going  
6 to infer that propensity in this case, and that is  
7 what the problem is.

8 MS. MCCORMICK: Your Honor, excuse me. If  
9 I might, there is no criminality involved in  
10 drinking alcohol when you are a person of age, as  
11 this defendant was at the time. There is no prior  
12 bad act, there is no propensity to drive drunk,  
13 which is part of this underlying charge, in  
14 suggesting or presenting evidence that this  
15 defendant does drink on a regular basis.

16 There are two separate issues, the ability  
17 of the toxicologist to give the educational  
18 information that the Court has described, but the  
19 Court plainly articulated exactly the point. Each  
20 person can and does react to and is affected by  
21 alcohol differently. Evidence of this defendant's  
22 drinking history, not to show his propensity to  
23 drink and drive, but this defendant's social  
24 drinking-- there is not going to be an allegation  
25 he's a heavy drinker, but, rather, that he drinks on

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1 a regular basis with friends-- is appropriate for  
2 the toxicologist to say that a person who would  
3 drink on a weekly basis would be more likely to  
4 hold--

5 THE COURT: Now--

6 MR. LAMAGNA: She just said it.

7 THE COURT: Now you've raised a Molineux  
8 issue which has not been brought forward nor  
9 addressed by this Court, and I am disinclined, as I  
10 sit here now, to permit testimony of his drinking on  
11 previous occasions as he is not charged with that.  
12 It is not a prior bad act, and I'm not going to have  
13 the jury conclude that he's an alcoholic or a drunk  
14 or someone who is prone to become intoxicated.

15 I will permit testimony as to what  
16 happened that night, and I will permit testimony as  
17 to what effect alcohol has on a person who drinks  
18 not at all or to the other end of the spectrum, in  
19 such a heavy manner so a .28 could leave him with a  
20 normal functioning capability and simply violated  
21 the statute saying he can't have more than .08.

22 MS. MCCORMICK: Your Honor, I would take  
23 issue with the concept being Molineux.

24 THE COURT: Do you want to put in evidence  
25 on prior occasions he has been known to drink?

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1 MS. MCCORMICK: I would like to do that,  
2 Judge, but not-- it is not a prior bad act. That  
3 was the reason I framed it in this context.

4 THE COURT: Maybe he likes to brush his  
5 teeth, too.

6 MS. MCCORMICK: The difference being this  
7 is relevant to his ability to be affected by alcohol  
8 that evening.

9 THE COURT: I'm not going to allow it.  
10 That would be unfair. What he did that night,  
11 you're home free. I've already given you the  
12 capability of putting the expert on. You are sort  
13 of in the position of needing to quit while you're  
14 ahead. Now you raised an issue I didn't know about,  
15 and, thank you, because now I'm not going to allow  
16 you to do that. It's not fair.

17 MS. MCCORMICK: I wanted to make sure the  
18 Court was aware of the dual issue of the  
19 toxicologist testifying, on the one hand, but I  
20 think that, with the Court's framing of the issue,  
21 in terms of the effects on individuals being  
22 different, that is clearly relevant evidence to this  
23 jury about what the effects would be on this  
24 defendant and his history.

25 THE COURT: I'll tell you what I'm going



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1 to do, which I've been trying to do from the start  
2 and so far both sides have been resisting to it.  
3 You can together fashion a precharge as to what the  
4 scope of this testimony will be insofar as I'll  
5 explain to the jury why this witness is being heard  
6 by them before he is heard, or a curative charge,  
7 for want of a better word, following his testimony  
8 as to what was intended by his production and  
9 testimony, but I have to have you guys working  
10 together. The same as with the stipulation on the  
11 chain of custody, the number of doctors, you guys  
12 have got to work together, and I don't know what  
13 else I can say.

14 MS. MCCORMICK: Judge, I understand that.  
15 I certainly agree that a charge to the jury is  
16 appropriate under all of these circumstances, but a  
17 charge to the jury does not, in and of itself, mean  
18 the underlying testimony is inappropriate or the  
19 background of this defendant is inappropriate.  
20 We're not suggesting that he engaged in prior  
21 criminal behavior.

22 THE COURT: No. No. What you're  
23 suggesting is he's an alcoholic, or well on the way,  
24 or in some fashion or other a guy who does not mind  
25 going to a party and kicking back a few, and that is

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1 not relevant to what he is charged with, which is  
2 murder on that night.

3 Mr. Hayden?

4 MR. HAYDEN: I have to speak, Judge.

5 This defendant's knowledge of the effects  
6 of alcohol on him goes directly to whether or not he  
7 was depraved when he went out and drove that night  
8 anyway in spite of having consumed alcohol. I would  
9 ask the Court to please consider that when making  
10 rulings in this area.

11 MR. LAMAGNA: Judge--

12 THE COURT: I absolutely believe that, but  
13 at the same time, Mr. Hayden, your table is going to  
14 have to prove these charges of what happened that  
15 night.

16 MR. HAYDEN: But, your Honor, we have to  
17 get into his head. As your Honor is aware, now  
18 depraved mind is a state of mind.

19 THE COURT: Are you claiming that this  
20 depraved state of mind was the process of some type  
21 of disease of alcoholism, which is progressive,  
22 therefore he was sick?

23 MR. HAYDEN: Absolutely not. There is no  
24 mention, no allegation, of alcoholism here. There  
25 is--

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1 THE COURT: Then why try to prove it?

2 MR. HAYDEN: We're not. What we're trying  
3 to--

4 THE COURT: The conclusion is inescapable.

5 MR. HAYDEN: We're talking about social  
6 drinking and the knowledge of the effects of alcohol  
7 on his senses, because if he's aware that alcohol  
8 affects his senses, he should know enough not to go  
9 out. It takes depravity to go out and drive anyway  
10 even knowing, as he would from prior experience,  
11 that alcohol has profound effects upon his senses.

12 It has nothing to do with alcoholism, it  
13 has nothing to do with falling down drunk, nothing  
14 like that, but we have to establish he understands--  
15 if this was a guy who was drinking for the first  
16 time that night and was overwhelmed by alcohol, he  
17 has no idea what the effects are going to be. We  
18 have to establish this man understands what those  
19 effects are going to be to establish that he was  
20 depraved when he went out that night and drove  
21 anyway.

22 MR. LAMAGNA: Judge, that is exactly--  
23 again, the prosecution has just articulated what  
24 I've been saying. They want to use prior drinking  
25 in the past, that has nothing to do with what

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1 happened that night, to prove that he has a  
2 propensity to drink.

3 THE COURT: I understand.

4 MR. LAMAGNA: So everybody who ever drank  
5 before, according to Mr. Hayden, not never or for  
6 the first time ever, everybody who socially drank  
7 before then would be in the position to know the  
8 effects of alcohol. That's nonsense.

9 MS. MCCORMICK: Exactly.

10 MR. LAMAGNA: If that's not the case, they  
11 want to show that he drank a lot in the past to  
12 prove it.

13 THE COURT: Hold on.

14 (Whereupon there was a pause in the  
15 proceedings.)

16 MS. MCCORMICK: Your Honor, may I clarify  
17 one point? Out of the dozen or so interviews we  
18 have done, there is no intention on the part of the  
19 People, and we would not be attempting to present  
20 evidence, that the defendant is an alcoholic.  
21 Simply the testimony is that-- or what we propose is  
22 that over the course of this man's time in New York  
23 that he would drink once a week or so as a social  
24 drinker. There is testimony he never drank during  
25 the week.

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1 THE COURT: I find myself-- I have this  
2 thought, and I just want to be able to get to it  
3 while I'm still thinking about it. I'm in a bit of  
4 a unique situation, I think. Since the defendant's  
5 indictment, the standard of the charge with which he  
6 is charged and the proof of that charge has changed.  
7 Feingold makes his state of mind relevant.  
8 Feingold, by the way, gives you the opportunity to  
9 defend by the defense of intoxication, which was  
10 previously unavailable.

11 Having said that, I don't want to prerule  
12 while you both still have things to say, but I see  
13 it a little more clearly right now.

14 Go ahead, Mr. LaMagna.

15 MR. LAMAGNA: Thank you, Judge.

16 Feingold articulated a new standard by  
17 which depraved indifference has to be judged by a  
18 jury. It is a state of mind. The state of mind is  
19 not intoxication. The mere fact a person is  
20 intoxicated is not, in and of itself, sufficient for  
21 a depraved-mind murder. It just isn't. You need  
22 more. It's what he was doing, what he was saying,  
23 how he was acting, what his demeanor was and all of  
24 those things put together to infer a state of mind.

25 THE COURT: The district attorney makes a

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1 good point. The point made by the district  
2 attorney, which has clarified this for me, is that a  
3 person wholly unacquainted with the effects of  
4 alcohol, to drink to a blood-alcohol content of .28,  
5 would be wholly in another category to a person who  
6 had taken drinks on previous occasions and was  
7 consequently able to begin to judge the effects of  
8 alcohol, forget about other people, but on himself.

9 MR. LAMAGNA: But that's not the issue for  
10 the depravity.

11 THE COURT: No, I agree with you.

12 MR. LAMAGNA: It's not necessarily  
13 alcohol, it's what the individual's state of mind  
14 was with respect to not having the regard for the  
15 lives of others.

16 THE COURT: That makes their point for  
17 them, because if I preclude-- and I'm not saying  
18 that I'm going to allow even if on 20 previous  
19 occasions in the prior two weeks he become  
20 falling-down drunk every night, but I think it is  
21 relevant to the jury that he was at least, to some  
22 degree, acquainted with the effects of alcohol on  
23 himself because he has been known, on prior  
24 occasions, to have had an alcoholic beverage.

25 MR. LAMAGNA: Judge, I implore you that on

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1           this issue it is going to propensity, and this is  
2           what this jury is going to infer with a DWI-related  
3           homicide, especially where the top charge is murder  
4           here, and I fear, and I implore you, Judge, they  
5           will be more inclined to believe that he drinks a  
6           lot rather than on occasion, and the fear is that  
7           they will convict of murder rather than manslaughter  
8           or any other lesser charge because of that.

9           To show his prior drinking habit is so  
10          speculative on a depraved mind. You could have a  
11          depraved mind whether you're drunk, not drunk,  
12          completely sober, have drank before or never drank a  
13          single drink. They are boot-strapping the alcohol  
14          and drinking and propensity to drink to make a case.

15          THE COURT: The never drank a single drink  
16          is where your argument fails because--

17          MR. LAMAGNA: It could go both ways. They  
18          want their cake and to eat it, too.

19          THE COURT: If in this case, while the  
20          defendant not having the burden, they chose to  
21          introduce, even through the testimony of their own  
22          witnesses, that the defendant had never before taken  
23          a drink--

24          MR. LAMAGNA: That's a different story. I  
25          can see where you're going. That would be a

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1 different story. If we said, well, hey, the defense  
2 here of intoxication was--

3 (Whereupon there was a pause in the  
4 proceedings.)

5 MR. LAMAGNA: Judge, may I continue?

6 As I was saying, I see where you're going  
7 with that intellectually. I agree if the defendant  
8 then proffered evidence saying he never drank before  
9 and you could argue that somehow the intoxication  
10 had something to do with the depraved mind, that is  
11 one thing. If he had five DWI convictions which  
12 would show not just drinking, it's the drinking and  
13 driving, you wouldn't allow that in.

14 This is a depraved-mind murder. It's not,  
15 it's not, whether he drank before or if he drank a  
16 lot. If it was completely somebody who knew the  
17 effects of alcohol on their bodies, like most  
18 people, probably the issue isn't whether or not he  
19 decided to drive, because that's a reckless  
20 manslaughter, what this is-- what this is is a  
21 depraved-mind murder, an indifference to human life.  
22 That's the state of mind. They have to prove that,  
23 not just by the alcohol. That's the manslaughter.  
24 If they just prove that, that's not murder. I  
25 implore you you cannot allow this prior drinking



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1 habit or his prior drinking history to come in.

2 THE COURT: You're using a word which, of  
3 course, is beneficial to your argument but somewhat  
4 distorts my thinking. It doesn't distort my  
5 thinking, it distorts how I'm expressing my  
6 thinking.

7 I think it's important that the jury know,  
8 if it's true, that the defendant was not  
9 unacquainted with the effects of alcohol insofar as  
10 it affected his own capabilities. I do not intend  
11 to allow evidence of heavy drinking on many previous  
12 occasions. I do intend to allow that the defendant  
13 was not unacquainted with drinking alcoholic  
14 beverages on previous occasions, not a history, not  
15 a history of heavy drinking, but an acquaintance  
16 with drinking alcoholic beverages on previous  
17 occasions.

18 Remember, he's up here from Arkansas. So  
19 the period of time with which these witnesses are  
20 acquainted with his prior history is abbreviated.  
21 I'm certainly not going to have them calling witness  
22 from high school and Old Miss to come in to testify  
23 as to what he did at his fraternity house.

24 What we're talking about is the  
25 acquaintance of the witnesses who the People intend

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1 to bring in. There are no secrets here. I know  
2 that some of these people are going to testify they  
3 tried to stop him. I've been made aware of that by  
4 both of you.

5 MR. LAMAGNA: I don't know if that's the  
6 case.

7 THE COURT: It's one of the theories I've  
8 heard. It's one of the scenarios that's been--

9 MR. LAMAGNA: That's actually news to me.

10 THE COURT: That's one of the things I've  
11 heard.

12 MR. LAMAGNA: I don't know. Could I ask  
13 the prosecution right now? I don't believe there is  
14 anybody that night that tried to stop him from  
15 driving.

16 (Whereupon there was a pause in the  
17 proceedings.)

18 MR. LAMAGNA: Judge, I believe, just for  
19 clarity of the record, I just had a quick  
20 conversation, there is no testimony or evidence  
21 that's going to be presented that anybody that night  
22 tried to stop my client from driving.

23 THE COURT: I stand corrected. One of the  
24 things that I recall from the volumes of information  
25 that's been made of available to me was that--

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1 MR. LAMAGNA: What I think it was is that  
2 I think somebody in the past, prior to this  
3 occasion, may have taken his keys, but that is not  
4 coming in either.

5 THE COURT: Here is the ruling of the  
6 Court. Thank you for your argument. I've heard  
7 enough to be able to make a decision.

8 Sorry, Bob. I've heard enough to make a  
9 decision.

10 I'm allowing the toxicologist in terms of  
11 the ability by the People to educate this jury as to  
12 what tolerance people have to alcohol and what  
13 tolerance different classes of people, familiar and  
14 unfamiliar with alcohol, have to alcohol and its  
15 effects.

16 I will permit a limited inquiry by the  
17 People into the fact that on prior occasions some of  
18 the People's witnesses have seen the defendant  
19 engage in social drinking, not to the extent that he  
20 ever became intoxicated, not to the extent anyone  
21 took his keys, but to the extent that on prior  
22 occasions the defendant had been seen by some of  
23 these witnesses to have been drinking alcoholic  
24 beverages at social occasions, period.

25 That's not comfortable with either of you,

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1           therefore, it's correct. If you both don't like it,  
2           that's the way to do it.

3                     I know you're dying to talk, Bob.

4                     MR. HAYDEN: Just briefly.

5                     It's our job to get into his head. That's  
6           the challenge now with depraved state of mind. We  
7           have to be able to establish what he knew. We have  
8           to be able to establish he understood the risks and  
9           decided to take them anyway, to a degree, that it  
10          was depraved.

11                    THE COURT: That night.

12                    MR. HAYDEN: Yes. But, Judge, in order to  
13          establish that what he did that night was depraved,  
14          we have to be able to establish what was going on in  
15          his mind. We have to get in there--

16                    THE COURT: That night.

17                    MR. HAYDEN: --to see what he knew, but if  
18          keys are taken from him on a prior occasion, then  
19          the danger of drinking and driving has been made  
20          very plain to him by other people showing concern.  
21          The fact he's aware of that is extremely important  
22          when he ignores it and goes out and drives anyway.

23                    THE COURT: That application is denied.

24                    I've given you more than I intended to. I've given  
25          them more than I intended to. It's fair. What I've

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1 done now, in my opinion, so I can sleep tonight, is  
2 fair.

3 MR. HAYDEN: Certainly, should he take the  
4 stand, what he knew that night--

5 THE COURT: If he takes the stand, we are  
6 talking about a completely different horse race.

7 MR. HAYDEN: Thank you, your Honor.

8 THE COURT: That's a whole different  
9 story. I'm not going to prerule on an objection.  
10 If he gets on the stand and places his credibility  
11 at issue, whatever they decide to ask him about, if  
12 there's an objection, I'll listen to it then.

13 MR. LAMAGNA: Judge, we did have a  
14 Sandoval hearing though, and we did ask for prior  
15 bad acts they want to cross-examine him about,  
16 drinking and driving or driving while intoxicated.  
17 We've passed that.

18 THE COURT: Gentlemen, or everybody, let's  
19 not cross that bridge.

20 MR. LAMAGNA: We did cross it at the  
21 Sandoval hearing.

22 THE COURT: We're now talking about--

23 MR. LAMAGNA: If he said I never did  
24 something, that I understand.

25 THE COURT: If wishes were horses, beggars

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1 would ride.

2 MR. LAMAGNA: We did have a Sandoval.

3 THE COURT: Yes, we did, and I ruled on

4 it.

5 (Whereupon the Court stood in recess for  
6 the day.)

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People v. Heidgen

1 SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU : CRIMINAL PART 31

2 -----x  
3 THE PEOPLE OF THE STATE OF NEW YORK

4 -against-

Indictment No.  
1910N-2005

5  
6 MARTIN ROBERT HEIDGEN,

7 Defendant.  
-----x

8  
9 Mineola, New York  
September 7, 2006

10 B E F O R E: HON. ALAN L. HONOROF  
11 Acting Supreme Court Justice

12 A P P E A R A N C E S:

13  
14 (Same as previously noted.)

15  
16 \* \* \* \*

17  
18 (Whereupon, the jury panel entered the  
19 courtroom.)

20 THE CLERK: Case on trial, indictment  
21 number 1910-2005, People v. Martin Heidgen.

22 People ready?

23 MR. HAYDEN: Ready, your Honor.

24 THE CLERK: Defense ready?

25 MR. LAMAGNA: Defendant ready, your Honor.

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1 THE CLERK: The defendant is present, your  
2 Honor.

3 THE COURT: Thank you.

4 Good morning, ladies and gentlemen. My  
5 name is Alan Honorof. This is a criminal trial here  
6 in the Supreme Court which is about to commence. I  
7 am going to be doing jury selection a little bit out  
8 of the ordinary in the following way: I am letting  
9 anyone who wants to be off this trial off this  
10 trial.

11 This case involves the charge of murder in  
12 the second degree. In this case the jury will hear  
13 of gruesome and terrible injuries. They will not  
14 see any photographs. The jury will hear of the  
15 alleged alcohol-related drunk-driving deaths of an  
16 adult by blunt force trauma and a young child by  
17 decapitation.

18 The case may last as long as five weeks.  
19 I have not made this decision yet, but it's possible  
20 the jury will be sequestered during their  
21 deliberations at the end of the case.

22 Due to the nature of the case and the time  
23 commitment involved, I'm allowing the decision as to  
24 whether you choose to be screened for this trial up  
25 to you. If you choose not to serve and be screened



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1 for this trial, you will be taken back to central  
2 jury and you will be screened for other cases. They  
3 will not be murder cases. They may last longer than  
4 this case. If you choose to be screened, my staff  
5 will give you additional instructions.

6 This case has received media attention and  
7 it will continue to receive media attention. If you  
8 are approached by members of the press, please do  
9 not discuss any aspect of this case with them.

10 At this time I am turning the proceedings  
11 over to my staff.

12 (Whereupon, a recess was taken.)

13 (Whereupon, the prospective jury panel  
14 entered the courtroom.)

15 THE CLERK: Case on trial, indictment  
16 number 1910N-05, People v. Martin Heidgen.

17 People ready?

18 MR. HAYDEN: Ready, your Honor.

19 THE CLERK: Defendant ready?

20 MR. LAMAGNA: Defendant is ready, your  
21 Honor.

22 THE CLERK: The defendant is present, your  
23 Honor.

24 THE COURT: Would you please take over,  
25 Jean?

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1 (Whereupon, the prospective jury panel was  
2 sworn.)

3 THE COURT: Fill the box, Jean.

4 THE CLERK: Ladies and gentlemen, when you  
5 hear your name, please follow the directions of the  
6 officers. Have your questionnaires out and  
7 available. Take all of your personal property with  
8 you. Thank you.

9 Seat number one, Linda Capozziello,  
10 C-A-P-O-Z-I-E-L-L-O.

11 (No response.)

12 No response, your Honor.

13 THE COURT: All right.

14 THE CLERK: Seat number one, Aldasola  
15 Okunboro, O-K-U-N-B-O-R-O.

16 (No response.)

17 THE CLERK: Migdalia Tromp, seat number  
18 one, M-I-G-D-A-L-I-A, T-R-O-M-P; seat number two,  
19 Daniel Paul, P-A-U-L; seat number three, Alex  
20 Gutierrez, G-U-T-I-E-R-R-E-Z; seat number four,  
21 Kenneth Kircher, K-I-R-C-H-E-R; seat number five,  
22 Zidnary Kinnard; K-I-N-N-A-R-D; seat number six,  
23 James Essig; E-S-S-I-G; seat number seven, Loy  
24 Malcolm, M-A-L-C-O-L-M; seat number eight, Bette  
25 O'Hare, O-H-A-R-E; seat number nine, Dawn Connors,

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1 C-O-N-N-O-R-S; seat number ten, Angela Grasso,  
2 G-R-A-S-S-O; seat number eleven, Triptarani Drugal.

3 (No response.)

4 THE CLERK: Seat number eleven, Edward  
5 Callaghan, C-A-L-L-A-G-H-A-N; seat number twelve,  
6 Lea Kwartler, K-W-A-R-T-L-E-R; seat number thirteen,  
7 Cara Aghabakian, A-G-H-A-B-A-K-I-A-N; seat number  
8 fourteen, Rubin Coryat, C-O-R-Y-A-T.

9 THE COURT: Welcome once again, ladies and  
10 gentlemen. To those of you standing, I apologize.  
11 I have some remarks which I'd like you all to hear,  
12 then those of you standing would be accompanied to a  
13 room where you'll be able to sit until we need more  
14 people than we will then have in the courtroom, but  
15 I would like you to hear what I have to say at this  
16 time.

17 Ladies and gentlemen, as you know, my name  
18 is Alan Honorof. I am the judge assigned in this  
19 trial part here in the Supreme Court with relation  
20 to the trial of the criminal case which is about to  
21 commence.

22 First thing, can everybody hear me?

23 Thank you.

24 I am going to address myself to all  
25 members of the jury panel, including those of you

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1 who may be seated or standing in the back of the  
2 courtroom. I would ask that you be kind enough to  
3 give your attention to the various remarks and  
4 instructions which I am about to give. During the  
5 course of my remarks I will explain briefly what  
6 this trial involves, and I will explain to you the  
7 separate functions that the judge and the jury  
8 perform in a trial of this nature.

9 You have been selected to appear in this  
10 Court as possible jurors in relation to the trial of  
11 a case entitled the People of the State of New York  
12 against Martin Heidgen, Defendant.

13 The People are represented by Robert  
14 Hayden and Maureen McCormick, the assistant district  
15 attorneys. The defendant is represented by his  
16 attorneys, Stephen LaMagna and Greg Martello.

17 May I caution you that simply because this  
18 legal proceeding is brought in the name of the  
19 People of State of New York, this does not in any  
20 manner indicate the public desires a specific  
21 verdict one way or the other. The People of this  
22 state will be served by whatever verdict is  
23 justified by the evidence at this trial.

24 During this portion of the trial a  
25 determination will be made as to who will actually

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1 sit as jurors in this case. That determination is  
2 made as a result of a series of questions which will  
3 be put to prospective jurors whose names are drawn  
4 at random from the selection drum who will, as a  
5 result, be seated in the jury box. In commencement  
6 of this process we have already selected and seated  
7 fourteen persons in this manner.

8 The purpose of questioning each  
9 prospective juror in the jury box we'll be going  
10 through in a moment is to elicit information  
11 concerning each proposed juror in order to be able,  
12 the Court and the attorneys, to select, so far as is  
13 humanly possible, a jury free from disposition,  
14 prejudice or bias. That is to say, the objective we  
15 all desire to accomplish is the selection of a jury  
16 that is both impartial and qualified to hear and  
17 determine the facts in this case.

18 The process of jury selection is an  
19 important part in the trial procedure in a criminal  
20 case. The nature of the questioning may be somewhat  
21 intensive. This is a necessary procedure in order  
22 that the objective of a fair and impartial trial  
23 jury may be fulfilled.

24 However, the questions which will be put  
25 to each of you either by myself or by either

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1 attorney are not intended to pry into your personal  
2 life or to embarrass you in any way. The purpose of  
3 these questions is simply to permit the respective  
4 attorneys to gain insight into the manner in which  
5 you believe you would serve as a juror if selected  
6 at this trial. Therefore, I must request that you  
7 answer all of the questions as candidly and as  
8 completely as you are able.

9 If for any reason whatsoever any  
10 prospective juror feels an answer will be sensitive  
11 or embarrassing, please raise your hand and I will  
12 have you approach the bench so that you can answer  
13 the question more privately.

14 Under indictment number 1910N-05, the  
15 defendant is charged with the crimes as follows:  
16 Murder in the second degree, two counts, assault in  
17 the first degree, three counts, reckless  
18 endangerment in the first degree, two counts,  
19 driving while intoxicated, two counts, as follows:

20 The Grand Jury of the County of Nassau by  
21 this indictment accuses the defendant of the crime  
22 of murder in the second degree, in violation of  
23 Section 125.25(2) of the Penal Law of the State of  
24 New York, committed as follows:

25 The defendant, Martin Heidgen, on or about

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1 the 2nd day of July, 2005, in the County of Nassau,  
2 State of New York, under circumstances evincing a  
3 depraved indifference to human life, recklessly  
4 engaged in conduct that created a grave risk of  
5 death to another person and thereby caused the death  
6 of Stanley Rabinowitz.

## Second count.

8 And the Grand Jury of the County of Nassau  
9 by this indictment further accuses the defendant of  
10 the crime of murder in the second degree, in  
11 violation of Section 125.25(2) of the Penal Law of  
12 the State of New York, committed as follows:

13 The defendant, Martin Heidgen, on or about  
14 the 2nd day of July, 2005, in the County of Nassau,  
15 State of New York, under circumstances evincing a  
16 depraved indifference to human life, recklessly  
17 engaged in conduct that created a grave risk of  
18 death to another person and thereby caused the death  
19 of Katherine Flynn.

## Third count.

21 And the Grand Jury of the County of Nassau  
22 by this indictment further accuses the defendant of  
23 the crime of assault in the first degree, in  
24 violation of Section 120.10(3) of the Penal Law of  
25 the State of New York, committed as follows:

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1           The defendant Martin Heidgen, on or about  
2           the 2nd day of July, 2005, in the County of Nassau,  
3           State of New York, under circumstances evincing a  
4           depraved indifference to human life, recklessly  
5           engaged in conduct that created a grave risk of  
6           death to another person and thereby caused serious  
7           physical injury to Christopher Tangney.

8           The fourth count is identical with the  
9           exception being the physical injury was caused to  
10          Denise Tangney.

11          The fifth count is identical with the  
12          exception being that the physical injury was caused  
13          to Neil Flynn.

14          Sixth count.

15          And the Grand Jury of the County of Nassau  
16          by this indictment further accuses the defendant of  
17          the crime of reckless endangerment in the first  
18          degree, in violation of Section 120.25 of the Penal  
19          Law of State of New York, committed as follows:

20          The defendant, Martin Heidgen, on or about  
21          the 2nd day of July, 2005, in the County of Nassau,  
22          State of New York, under circumstances evincing a  
23          depraved indifference to human life, recklessly  
24          engaged in conduct that created a grave risk of  
25          death to Elizabeth Serwin.



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1 Seventh count.

2 And the Grand Jury of the County of Nassau  
3 by this indictment further accuses the defendant of  
4 the crime of reckless endangerment in the first  
5 degree, in violation of Section 120.25 of the Penal  
6 Law of the State of New York, committed as follows:

7 The defendant, Martin Heidgen, on or about  
8 the 2nd day of July, 2005, in the County of Nassau,  
9 State of New York, under circumstance evincing a  
10 depraved indifference to human life, recklessly  
11 engaged in conduct that created a grave risk of  
12 death to Joseph Caruso.

13 Eighth count.

14 And the Grand Jury of the County of Nassau  
15 by this indictment further accuses the defendant of  
16 the crime of operating a motor vehicle while under  
17 the influence of alcohol, in violation of Section  
18 1192.2 of the Vehicle and Traffic Law of the State  
19 of New York, committed as follows:

20 The defendant, Martin Heidgen, on or about  
21 the 2nd day of July, 2005, in the County of Nassau,  
22 State of New York, operated a motor vehicle on a  
23 public highway while he had .08 of one per centum or  
24 more by weight of alcohol in his blood as shown by  
25 chemical analysis of his blood pursuant to Section

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1 1194 of the Vehicle and Traffic Law, to wit: .28.

2 Ninth count.

3 And the Grand Jury of the County of Nassau  
4 by this indictment further accuses the defendant of  
5 the crime of operating a motor vehicle while under  
6 the influence of alcohol in violation of Section  
7 1192.3 of the Vehicle and Traffic Law of the State  
8 of New York, committed as follows:

9 The defendant, Martin Heidgen, on or about  
10 the 2nd day of July, 2005, in the County of Nassau,  
11 State of New York, operated a motor vehicle on a  
12 public highway while he was in an intoxicated  
13 condition.

14 All of the acts and transactions alleged  
15 in each of the several counts of this indictment are  
16 connected together and form part of a common scheme  
17 and plan.

18 Dated: Mineola, New York, August 31,  
19 2005, signed by Denis Dillon, who was the district  
20 attorney at that time.

21 Now, before we go any further, members of  
22 the panel, I wish to inform you that an indictment  
23 is simply an accusation against the defendant. It  
24 creates no presumption of the defendant's guilt  
25 since under our system of justice the defendant is

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1           presumed innocent, and this presumption of innocence  
2           remains with the defendant all throughout the trial  
3           and until proven otherwise by a verdict of a jury.  
4           In a sense, the indictment is a medium which brings  
5           us all together in this courtroom for the purpose of  
6           hearing testimony concerning the charges.

7                     This trial is the process by which we will  
8           determine if the charges will be proven by  
9           sufficient evidence. In that process those of you  
10          who are to be selected as jurors and I as the judge  
11          perform separate and distinct functions. As jurors,  
12          you are going to be called upon to determine whether  
13          or not the evidence which you will hear and possibly  
14          see in this case establishes the defendant's guilt  
15          beyond a reasonable doubt.

16                    In order to do this you will have to  
17          evaluate all the evidence at the end of the trial to  
18          determine whether the testimony you have heard from  
19          the witnesses and any exhibits you might see is, in  
20          fact, true and what weight you will give to such  
21          evidence. This is called finding the facts. That  
22          will be your function alone. I will find no facts  
23          at this trial. The jury alone will render a verdict  
24          in this case.

25                    In a criminal case the burden of proof is

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1 on the People to prove the guilt of the defendant  
2 beyond a reasonable doubt. This burden remains on  
3 the People throughout the trial. The defendant in a  
4 criminal case is not required to prove or disprove  
5 anything in relation to the charges made against  
6 him.

7 Under our system of law the defendant is  
8 not obligated to take the witness stand or call any  
9 witnesses. The law provides that you may not draw  
10 any inference unfavorable to the defendant from the  
11 fact that he does not take the stand.

12 At the appropriate time at the end of the  
13 case I will define for you the term "reasonable  
14 doubt." Suffice it to say at this time, however,  
15 you will be required to find the defendant not  
16 guilty if, because of the evidence or lack of  
17 evidence presented to you, you have a reasonable  
18 doubt as to guilt. On the other hand, the People  
19 are not required to prove guilt beyond all doubt or  
20 beyond an absolute certainty or to a mathematical  
21 certainty. If you find, therefore, that the People  
22 have met the burden of proof which is required of  
23 them, then it would be equally your responsibility  
24 to return a verdict of guilty.

25 Your function as jurors will terminate

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1 when you make your determination as to whether the  
2 defendant is found guilty or not.

3 Punishment of the defendant, if he should  
4 be found guilty, is not the jury's concern. Any  
5 punishment required is the sole function of the  
6 Court, nor may you permit sympathy or pity to  
7 influence your deliberations.

8 As jurors, your ultimate decision as a  
9 result of the trial process is called a verdict.  
10 Your verdict will be either guilty or not guilty.  
11 Whatever the verdict of the jury may be, it must be  
12 by unanimous vote.

13 My role at the trial is to ensure that you  
14 reach your verdict in accordance with the law, and  
15 at the appropriate time I will explain to you what  
16 the law is in relation to the issues at this trial.  
17 In this respect you must bear in mind that you are  
18 required to accept the law as I give it to you, even  
19 if you should privately disagree with it.

20 Upon the conclusion of the questioning of  
21 prospective jurors, particular persons may be  
22 challenged by either or both of the attorneys. You  
23 must not be embarrassed or upset if this occurs. It  
24 is no reflection upon the ability, honesty or  
25 integrity of any juror. It simply means in the

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1 light of the experience and expertise of the  
2 particular attorney, a prospective juror may not  
3 fulfill all the desires the attorney may have with  
4 regard to the duty that he or she must perform in  
5 representing his or her client.

6 At this time, Jean, I think we can take  
7 the People who are standing and make them more  
8 comfortable, then we'll turn our attention to the  
9 fourteen people up here.

10 (Whereupon, the standing jurors exit the  
11 courtroom.)

12 THE COURT: I am addressing myself to the  
13 fourteen of you up here, although the rest of you  
14 please pay attention. I'm informed-- first of all,  
15 I've introduced all of us. Do any of you know any  
16 of us?

17 PROSPECTIVE JUROR #14: Yes.

18 THE COURT: Who do you know?

19 PROSPECTIVE JUROR #14: ADA McCormick.

20 THE COURT: Okay. In that case, sir,  
21 thank you for that. Would you please go back to  
22 central jury.

23 (Whereupon, the prospective juror was  
24 excused.)

25 THE CLERK: Seat number fourteen, Qwing

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1 Wang.

2 THE COURT: Do you know any of us, sir?

3 Do you know any of us?

4 PROSPECTIVE JUROR #14: No. Who?

5 THE COURT: The People I've just  
6 introduced, the lawyers, the defendant?

7 PROSPECTIVE JUROR #14: I know, yeah.

8 Sorry.

9 THE COURT: Sir, why don't you go back to  
10 central jury, sir.

11 (Whereupon, the prospective juror was  
12 excused.)

13 THE CLERK: Seat number fourteen, Heather  
14 Tolliner, T-O-L-L-I-N-E-R.

15 THE COURT: Ma'am, do you know any of us?

16 PROSPECTIVE JUROR #14: No.

17 THE COURT: Okay. I'm told by the lawyers  
18 that the following people might be called as  
19 witnesses. It's a bit on the lengthy side, so stay  
20 with me here. If you know any of these people,  
21 please raise your hand:

22 Michael Stafford, Sergeant Scott Crawford,  
23 Linda Lindenthaler, John Whittall, Eric Baez,  
24 Michael Harris, Daniel O'Hare, Michael Drake,  
25 Maureen Roman, John Kwasnoski, Frank Lynch, John

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1 Ramos, Chris Sweeney, Laurence Hemmerich, Patrick  
2 Siegler, Steed Davidson, Denise Tangney, Christopher  
3 Tangney, Jennifer Flynn, Neil Flynn, Christopher  
4 Pandolfo, Timothy Nolan, Del Lisk, Keith Rabinowitz,  
5 Michael Ierardi, I-E-R-A-R-D-I, Dorothy Busco,  
6 Michael Tangney, Matthew Sussingham, Greg Nizewitz,  
7 Amy Hauck, Josh Sodikoff, Ilana Fromme, Tracey  
8 Sodikoff, David Weiss, Mike Amato, Jamie Ormond,  
9 Joshua Zigman, Justin Goldman, Brian Burkhardt,  
10 Amanda Goldman, Jane Gerner, Stephen Weber, James  
11 Schiro, Elizabeth Serwin, Joseph Caruso, Joseph  
12 Todaro, Wade Bartlett.

13 The following ten witnesses are all  
14 doctors:

15 Gerard Catanese, Michael DeMartino,  
16 William Closson, Alain Derzie, David Zarat.

17 All right. How do you know him?

18 PROSPECTIVE JUROR #9: I work with him.

19 THE COURT: You know him personally?

20 PROSPECTIVE JUROR #9: He's a doctor.

21 THE COURT: Have you met and spoke with  
22 him?

23 PROSPECTIVE JUROR #9: Yes.

24 THE COURT: Thank you, ma'am. You go back  
25 to Supreme Court.



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1 (Whereupon, the prospective juror was  
2 excused.)

3 THE CLERK: Filling seat number nine,  
4 Diane Swenson, S-W-E-N-S-O-N.

5 THE COURT: Ma'am, before you go down  
6 there, do you know any of us?

7 PROSPECTIVE JUROR #9: No.

8 THE COURT: Did you know any of the names  
9 I've read so far?

10 PROSPECTIVE JUROR #9: No.

11 THE COURT: Please have a seat.

12 Continuing, these are still doctors:  
13 Andrew Pomerantz, Sean McCance, Peter Gelfand, Rosie  
14 O'Regan, Christian Nahas, and this is not a doctor,  
15 John Cunningham, Joe Foster, Dustin Pitonyak, Aire  
16 Moreledge, Steven Schneider.

17 Now, this is in anticipation of what the  
18 lawyers are probably also intending to ask you, do  
19 any of you know anything about this case besides  
20 what you've learned in this courtroom over the last  
21 day or two?

22 PROSPECTIVE JUROR #13: Yes.

23 THE COURT: What do you know about it?

24 PROSPECTIVE JUROR #13: I've been  
25 following it.

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1 THE COURT: You read about it in the  
2 papers or heard about it on the radio?

3 PROSPECTIVE JUROR #13: Yes.

4 THE COURT: Anybody else?

5 Everybody heard about this case in some  
6 way or another. Those of you who have heard about  
7 it, have any of you already made up your mind and  
8 are consequently unable to be fair?

9 PROSPECTIVE JUROR #13: Yeah.

10 THE COURT: You feel you could be fair or  
11 you cannot be?

12 PROSPECTIVE JUROR #14: No.

13 PROSPECTIVE JUROR #13: No.

14 THE COURT: You say you can't be fair?

15 PROSPECTIVE JUROR #14: No. I know people  
16 who know of the family.

17 THE COURT: You say you can't be fair.  
18 That's fine. You're excused. Go back to Supreme  
19 Court.

20 (Whereupon, the prospective juror was  
21 excused.)

22 Anybody else?

23 So far you've heard no evidence  
24 whatsoever. You know exactly nothing about this  
25 case except whatever was written in the newspaper or

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1 magazine you might have read about it in. You have  
2 no evidence at all.

3 Is anybody else unable to be fair?

4 You are unable?

5 PROSPECTIVE JUROR #13: Unable. That's  
6 what I said.

7 THE COURT: I misunderstood you. Go back  
8 to Supreme Court.

9 (Whereupon, the prospective juror was  
10 excused.)

11 THE COURT: Before we fill the box, for  
12 everybody, this case is going to be in the papers.  
13 It's going to be on News 12 and probably some of the  
14 major channels. Also it's going to be on the radio.  
15 As hard as it might be, don't listen, don't watch,  
16 don't read. You know what? It's not fair. If you  
17 take an oath to be fair, you've got to be fair. The  
18 only people who are going to really know what's  
19 going on in this case are you. You're going to hear  
20 the witnesses. Newspapers, TV, radio, they don't  
21 know what's going on. They're not here. There  
22 might be a reporter here from time to time, but they  
23 don't know. You know. And the only way it will be  
24 fair to him is not to read the papers about this  
25 case, not to listen to radio reports and not to

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1 watch TV reports.

2 Can you all do that?

3 Great.

4 Fill the box.

5 THE CLERK: Seat number thirteen, Roberto  
6 Espinosa.

7 (No response.)

8 THE COURT: We're a little bit delayed,  
9 obviously. The person we just called is one of the  
10 people who were standing and had to go to another  
11 room. Please bear with us.

12 Why don't you call the second one in the  
13 meantime.

14 THE CLERK: Seat number fourteen, John  
15 Doyle, D-O-Y-L-E.

16 THE COURT: Mr. Doyle, let me ask you at  
17 the moment, first of all, do you know any of us?

18 PROSPECTIVE JUROR #14: No.

19 THE COURT: Did you know anybody on the  
20 witness list?

21 PROSPECTIVE JUROR #14: No.

22 THE COURT: You've read or heard something  
23 about this case before you got here today?

24 PROSPECTIVE JUROR #14: Yes.

25 THE COURT: By virtue of what you've read

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1 or heard or seen, do you feel that you could not be  
2 fair or do you feel you can give this guy a fair  
3 shot and listen to the evidence?

4 PROSPECTIVE JUROR #14: I feel I could be  
5 fair.

6 (Whereupon, Mr. Espinosa entered the  
7 courtroom.)

8 THE COURT: Mr. Espinosa, before you sit  
9 down, I've briefly introduced all of us while you  
10 were here earlier. Do you know any of us?

11 PROSPECTIVE JUROR #13: No.

12 THE COURT: Have a seat.

13 I want to show you something. I'm going  
14 to bring to you, sir, a copy of the list of  
15 witnesses I've already read. Have a look at these  
16 names, sir, and see if you know anybody on either of  
17 those lists.

18 You don't know anybody?

19 PROSPECTIVE JUROR #13: No.

20 THE COURT: Now, some of the other  
21 jurors-- in fact, most of the other jurors indicated  
22 before they came to court, over the last year  
23 they've heard or read or have seen something about  
24 this case. Have you? Do you know anything about  
25 this case?

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1 PROSPECTIVE JUROR #13: No.

2 THE COURT: Perfect. Okay.

3 Who will conduct questioning on behalf of  
4 the prosecution?

5 MS. MCCORMICK: I will, your Honor.

6 THE COURT: Go ahead.

7 MS. MCCORMICK: I always had a really big  
8 mouth. I hope everybody back here can hear me.

9 Good morning, ladies and gentlemen. I  
10 want to thank you for hanging in there. The judge  
11 gave a recitation of some of the terrible facts in  
12 this case, and right up front you could have  
13 relieved yourself of this duty, of this opportunity,  
14 if you see it that way, but I appreciate you didn't  
15 do that.

16 The defendant, as you know, as the judge  
17 has told you, is charged with murder. It's the most  
18 serious crime in our law, but there is some facts  
19 about this case that are, themselves, unique and may  
20 be too troubling for some people to be able to sit  
21 on the jury, so I'm going to ask you some questions.  
22 I think you probably saw me scribbling furiously  
23 notes. If I refer to my notes or butcher your name,  
24 please forgive me.

25 Everyone in the room, my colleague, Bob

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1 Hayden from the District Attorney's Office,  
2 Mr. LaMagna, Mr. Martello, the Judge, of course, are  
3 hoping for a fair jury, and fair, of course, means  
4 straight down the middle, not leaning one way or the  
5 other, able to sit here in the courtroom and listen  
6 only to the facts here in this courtroom, for you to  
7 be the judge of those facts.

8 In this particular case the allegations  
9 are that the defendant, Martin Heidgen, was driving  
10 on July 1st, the overnight of a Friday night into a  
11 Saturday morning, at about two o'clock in the  
12 morning. He had consumed enough alcohol that, we're  
13 alleging, we're going to prove, that he had a .28  
14 blood alcohol concentration.

15 He got onto, at some point, the  
16 Meadowbrook Parkway going northbound but in the  
17 southbound lanes of the Meadowbrook Parkway. He  
18 continued driving, we're going to allege, a few  
19 miles.

20 MR. LAMAGNA: Judge, I'm going to object  
21 to the facts.

22 THE COURT: It started out as foundation.

23 MS. MCCORMICK: I'm just trying to--

24 THE COURT: That's it, Miss McCormick.

25 MS. MCCORMICK: Yes, your Honor.

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1           The point is that there was a horrific  
2 crash, a head-on collision, and so that's why we are  
3 here. This is a crash case. It is a case involving  
4 two vehicles colliding on a roadway in Nassau  
5 County. People drive everywhere every day in Nassau  
6 County.

7           Is the fact that this case involves a  
8 crash of two vehicles, is that, itself, troubling to  
9 any one of you, that a criminal charge could result  
10 from a crash of two vehicles?

11           Mrs. Tromp, what are you thinking? Do you  
12 think a crime can derive out of a car crash or do  
13 you think it should only be a civil suit and that no  
14 crime should result from it? What do you think?

15           PROSPECTIVE JUROR #1: Yes, I think a  
16 crime should result.

17           MS. MCCORMICK: Of course you haven't  
18 heard the facts. You're going to have to hear what  
19 those facts are from the evidence. Do you think a  
20 crime can result from from it?

21           PROSPECTIVE JUROR #2: I think it can.

22           PROSPECTIVE JUROR #3: Yes.

23           PROSPECTIVE JUROR #4: Yeah.

24           PROSPECTIVE JUROR #5: Yes.

25           PROSPECTIVE JUROR #6: Yes.



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1 PROSPECTIVE JUROR #14: Yes.

2 PROSPECTIVE JUROR #13: Yes.

3 PROSPECTIVE JUROR #12: Yes.

4 PROSPECTIVE JUROR #11: Yes.

5 PROSPECTIVE JUROR #10: Yes or no.

6 MS. MCCORMICK: Okay.

7 PROSPECTIVE JUROR #9: Yes.

8 PROSPECTIVE JUROR #8: Yes.

9 PROSPECTIVE JUROR #7: Yes.

10 MS. MCCORMICK: Is there anyone who, by a  
11 show of hands, has ever been involved in a crash?

12 THE COURT: Excuse me, ladies and  
13 gentlemen. My court reporter is having a very hard  
14 time hearing you. If you wouldn't mind, please  
15 speak up as loud as you can.

16 MS. MCCORMICK: Before I get there, why  
17 don't I ask who here drives a car?

18 Do you drive?

19 PROSPECTIVE JUROR #1: I do.

20 MS. MCCORMICK: By a show of hands.

21 Everybody in Nassau County. Okay.

22 Has anyone in the course of driving their  
23 car ever been involved in a scratch of any sort?

24 Okay.

25 Again, from a show of hands, has anybody

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1           been involved in a crash wherein there were criminal  
2           charges brought after that crash against any of the  
3           drivers?

4                       No criminal charges.

5                       So we're right back to where I started  
6           from. Is there any reason from your own experiences  
7           in being involved in traffic crashes, anything that  
8           happened there, that you thought criminal charges  
9           should have been brought and weren't or that you  
10          think will impact you on sitting on this case?

11                      (No response.)

12                      Is there anyone who raised their hand?

13                      If you can raise it again, anybody having  
14          been involved in a traffic crash who thinks that by  
15          being involved in a crash, how the police responded,  
16          whatever, will affect you in this case? Anybody  
17          think they'll be affected?

18                      (No response.)

19                      Silence. Okay. I'm going to take that as  
20          a no, then.

21                      Let me ask you my next question. Part of  
22          what you've already heard is that alcohol was  
23          involved in this crash. I presume, but I hope I'm  
24          right, that since no one was charged in any of the  
25          crashes in which you were involved, that alcohol was

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1 not involved in any of those cases. Is that a  
2 correct assumption?

3 Has anyone been involved in a traffic  
4 crash where one of the drivers was accused of  
5 driving while intoxicated? No?

6 PROSPECTIVE JUROR #12: I just want to  
7 mention my car was totaled by a drunk driver who got  
8 out and was belligerent with the police in front of  
9 my house. I wasn't involved in the crash, but my  
10 car was totaled.

11 MS. MCCORMICK: You were involved to the  
12 extent your car-- you weren't in it at the time?

13 PROSPECTIVE JUROR #12: I was not in it or  
14 was my daughter.

15 MS. MCCORMICK: Was the driver of that car  
16 charged, do you know?

17 PROSPECTIVE JUROR #12: She was. She  
18 served time.

19 MS. MCCORMICK: Is there anything about  
20 that fact, about your experiences with having been  
21 the victim of a drunk driver, albeit your car was  
22 the victim, that would affect you in this case?

23 PROSPECTIVE JUROR #12: Well, just to be  
24 honest, if I was in the car and my daughter was in  
25 the car, we probably would have been dead as the car

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1 was completely totaled, smashed into a tree. I do  
2 think that that is a concern of mine.

3 MS. MCCORMICK: As it would be with  
4 anybody. But now that you know-- you've had that  
5 experience and you were not in the car, but now that  
6 you know this is a case where that exact accusation  
7 is being made, that Martin Heidgen was driving drunk  
8 and did cause the death of two people, do your own  
9 experiences-- do you think your own experiences will  
10 impact on your ability to be fair in this case?

11 PROSPECTIVE JUROR #12: I don't think so.

12 MS. MCCORMICK: Meaning you can be fair?

13 PROSPECTIVE JUROR #12: Yes.

14 MS. MCCORMICK: Do you think you can put  
15 that aside and judge this case only on the facts?

16 PROSPECTIVE JUROR #12: Yes.

17 MS. MCCORMICK: Okay. Thank you.

18 Does anyone along those lines know of  
19 anyone who themselves have been accused of driving  
20 while intoxicated? A relative? A friend?

21 Yes? Okay.

22 And in terms of how those cases were  
23 handled, can you tell me, sir, was there anything  
24 about that person being--

25 PROSPECTIVE JUROR #2: It's actually

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1 several people.

2 MS. MCCORMICK: Several people. Okay.

3 Is there anything about those facts-- do  
4 you mind my asking what your relationship is to  
5 those people?

6 PROSPECTIVE JUROR #2: Just friends.

7 MS. MCCORMICK: Friends. Anything about  
8 that-- do you think they were unfairly accused or is  
9 there anything about those experiences that you  
10 think would impact your ability to sit on this case?

11 PROSPECTIVE JUROR #2: No.

12 MS. MCCORMICK: How about the disposing of  
13 their cases? Do you think that they received too  
14 harsh or too lenient treatment?

15 PROSPECTIVE JUROR #2: I really couldn't  
16 say. I know they had been arrested. I don't really  
17 know.

18 I'm a bartender, so this has actually come  
19 up quite a bit, but, no, I think it's not really my  
20 place to say-- you know, I don't know the specifics  
21 of their cases.

22 MS. MCCORMICK: So in this case you'd be  
23 able to only listen to what occurred in this case on  
24 these facts and judge it not based on those outside  
25 experiences?

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1 PROSPECTIVE JUROR #2: Yes.

2 MS. MCCORMICK: Who else knows someone who  
3 has been arrested?

4 You, sir?

5 PROSPECTIVE JUROR #4: Yes.

6 MS. MCCORMICK: Can I ask what your  
7 relationship is to that person?

8 PROSPECTIVE JUROR #4: It was me.

9 MS. MCCORMICK: It was you. Okay.

10 Can I ask you, is there anything about  
11 that-- it's not still pending, is it?

12 PROSPECTIVE JUROR #4: No. It's long  
13 gone.

14 MS. MCCORMICK: Okay. About how long  
15 gone?

16 PROSPECTIVE JUROR #4: Ten years.

17 MS. MCCORMICK: Okay. Was that case  
18 prosecuted here in Nassau County?

19 PROSPECTIVE JUROR #4: Absolutely.

20 MS. MCCORMICK: Is there anything about  
21 that experience, either the way you were treated by  
22 the police or the District Attorney's Office, that  
23 would impact your ability in this case?

24 PROSPECTIVE JUROR #4: There were half  
25 truths spoken.

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1 MS. MCCORMICK: There was some false  
2 accusations?

3 PROSPECTIVE JUROR #4: Absolutely.

4 MS. MCCORMICK: Do you think-- would you  
5 apply your experiences, then, to listening to the  
6 evidence in this case?

7 PROSPECTIVE JUROR #4: I would hope not  
8 but--

9 MS. MCCORMICK: See, this is a critical  
10 issue. This is a hard thing to do. We're in an  
11 open place, but, everyone, the only way we're going  
12 to get a fair jury here is by being completely  
13 honest.

14 I really appreciate your honesty. If you  
15 have any hesitations that you think even  
16 subliminally in your good conscience may affect your  
17 ability to be fair, now would be the time to say so.

18 PROSPECTIVE JUROR #4: It's hard to say,  
19 you know, right at the moment, but probably.

20 MS. MCCORMICK: Okay, sir. Thank you. I  
21 really appreciate your honesty. That was tough.

22 Anybody else? Nobody?

23 PROSPECTIVE JUROR #6: Yes.

24 MS. MCCORMICK: Who was it, sir?

25 PROSPECTIVE JUROR #6: A relative.

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1 MS. MCCORMICK: Again, just like this  
2 gentleman here, is there anything about that  
3 experience that would impact on your ability to  
4 listen fairly and openly to the facts in this case?

5 PROSPECTIVE JUROR #6: No.

6 MS. MCCORMICK: You're sure?

7 PROSPECTIVE JUROR #6: Yes.

8 MS. MCCORMICK: Who else? I'm just going  
9 to--

10 PROSPECTIVE JUROR #8: My brother-in-law.

11 MS. MCCORMICK: He was accused?

12 PROSPECTIVE JUROR #8: We don't talk much.  
13 I know he was in jail for a little bit.

14 MS. MCCORMICK: Do you have any feelings,  
15 any gut reactions, it was wrong, it was right,  
16 anything like that?

17 PROSPECTIVE JUROR #8: No. We're not very  
18 close.

19 MS. MCCORMICK: Okay. Is there anything  
20 about your brother-in-law being arrested for DWI  
21 that would impact on your ability to be fair in this  
22 case?

23 PROSPECTIVE JUROR #8: Not at all.

24 MS. MCCORMICK: You, sir?

25 PROSPECTIVE JUROR #11: I also have



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1 in-laws, both arrested, both served time, one turned  
2 his life around, one didn't.

3 MS. MCCORMICK: Okay. Again--

4 PROSPECTIVE JUROR #11: I know a lot of  
5 people who have never been caught who have run into  
6 parked cars and trees, things like that.

7 MS. MCCORMICK: When you take the gamut of  
8 all your experiences--

9 PROSPECTIVE JUROR #11: Taking the whole  
10 gamut of my experiences, when you say that the blood  
11 alcohol was two-eight, it's starting to affect me.

12 MR. LAMAGNA: Judge, I'm going to object.  
13 This is why I didn't want to object before. His  
14 response was that-- what he said is that his  
15 blood-alcohol level was a two-eight. There's been  
16 no evidence of that. It's just an allegation.  
17 That's why--

18 THE COURT: Let me help you out there,  
19 Mr. LaMagna.

20 At this moment in time you've heard no  
21 evidence at all. The fact that I read the  
22 indictment, some piece of paper someplace-- there  
23 has to be an accusatory instrument or we can't get  
24 here. They, the People, have to prove the  
25 allegations in the indictment, each and every one,

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1 beyond a reasonable doubt. At the moment they have  
2 proven nothing. If you had to vote right now, by  
3 law the verdict would be not guilty on all counts.  
4 You've heard no evidence.

5 MS. MCCORMICK: We're clear on that,  
6 right?

7 Let me get back to you, sir. Let me see  
8 if I can read my own chart. Are you Mr. Callaghan?

9 PROSPECTIVE JUROR #11: Correct.

10 MS. MCCORMICK: Mr. Callaghan, with all of  
11 your experiences, do you think that they will affect  
12 your ability to be a fair and impartial juror in  
13 this case?

14 PROSPECTIVE JUROR #11: At this point,  
15 yes. Now that I've dwelled on that number and I'm  
16 putting things together-- like I know highway  
17 policemen, I know those tests are not inaccurate.

18 MS. MCCORMICK: Okay. Thank you. Again,  
19 I appreciate your honesty.

20 Is there anybody sitting here who has  
21 stuff creeping in the corners of their brain that  
22 you think you should bring to our attention?

23 (No response.)

24 Does anybody else know someone who has  
25 been arrested for drunk driving?

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1 No? Okay.

2 Well, still this involves a crash. It  
3 involves-- I guarantee you that somewhere along the  
4 line in this case you will hear the word "accident"  
5 used.

6 Mr. Doyle, could you tell me, sir, how  
7 would you define the word "accident"?

8 PROSPECTIVE JUROR #14: An unintentional  
9 event.

10 MS. MCCORMICK: An unintentional event is  
11 a perfectly good definition. You know, in this case  
12 it might apply to the extent that-- you will not  
13 hear from anyone in this courtroom that the  
14 defendant went out with the intent in his mind to  
15 murder Katie Flynn and Stanley Rabinowitz. You're  
16 not going to hear that in this courtroom. So we're  
17 going to start with a couple of things. All right?

18 Accident. Unintentional event. That  
19 covers a lot of ground, doesn't it, Miss Kinnard?  
20 Supposing you have someone who decides they need to  
21 paint a two-story house. They buy a ladder, they  
22 head up the ladder and they slip and they fall.  
23 Would you call that an accident?

24 PROSPECTIVE JUROR #5: Yes.

25 MS. MCCORMICK: Now I have to look at my

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1 chart. I'm sorry.

2 Mr. Gutierrez, supposing the same person  
3 went to a store to buy a ladder then chose to take a  
4 lawn chair, balance it on a picnic table-- I don't  
5 know if you know people like this-- balance it on a  
6 picnic table and reach up to paint and they also  
7 fell. Would you still call that an accident?

8 PROSPECTIVE JUROR #3: Yes.

9 MS. MCCORMICK: It is different than the  
10 first accident, isn't it?

11 PROSPECTIVE JUROR #3: Yes.

12 MS. MCCORMICK: Taking it one more step,  
13 Miss Swenson, if that same person balances that lawn  
14 chair on the picnic table and does it knowing that  
15 kids are playing underneath and fell and injured  
16 them, would you still call that an accident?

17 PROSPECTIVE JUROR #9: No.

18 MS. MCCORMICK: Now, some people might  
19 think-- it's an unintended result, right?

20 PROSPECTIVE JUROR #9: Yes.

21 MS. MCCORMICK: Yet all three of those  
22 things are very different from one another, aren't  
23 they?

24 PROSPECTIVE JUROR #9: Yes.

25 MS. MCCORMICK: Do you promise in

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1 listening to the evidence in this case that you'll  
2 assess the choices made? Whether this is  
3 unintentional or whether it's unavoidable, there's a  
4 difference in those two things.

5 Will you listen to the evidence, Miss  
6 Malcolm?

7 PROSPECTIVE JUROR #7: Yes.

8 MS. MCCORMICK: Will you also listen to  
9 the evidence and the distinction in this evidence in  
10 addition to that?

11 The judge has already told you you are the  
12 judges of the facts in this case. You and you alone  
13 will decide what happened that night based on the  
14 evidence in this case. The judge, of course, will  
15 define the law for you, and you have to follow that  
16 law. That sounds really easy to do, but as the  
17 judge told you, you have to follow the law.

18 Everyone raised their hand and said that  
19 you are a driver, so let me ask you, Miss Tromp, how  
20 do you feel-- this is not a case about wearing seat  
21 belts. What do you think about the law that  
22 requires you to wear seat belts in your car?

23 PROSPECTIVE JUROR #1: It's a good law.

24 MS. MCCORMICK: It's a good law. Do you  
25 think so?

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1 PROSPECTIVE JUROR #2: Yes.

2 MS. MCCORMICK: Everybody thinks it's a  
3 good law?

4 You're all better than my dad. Okay? My  
5 dad happens to think that New York State has no  
6 business telling him that he has to wear a seat belt  
7 in his car. You can imagine Thanksgiving dinner at  
8 our house, but, nonetheless, if this were a case  
9 about wearing a seat belt, it's not, but if it was a  
10 case about that and he was sitting where you're  
11 sitting, he would be swearing and taking an oath to  
12 follow that law even though he's telling you right  
13 up front I hate this law, I don't think they have  
14 any business telling me what I should have to do.

15 It's not so easy, is it? Do you think  
16 that you can put aside how you feel about the law  
17 and follow the law the way the judge gives it to  
18 you? This one is so big, I'm going to ask each one  
19 of you.

20 PROSPECTIVE JUROR #1: Yes.

21 PROSPECTIVE JUROR #2: Yeah.

22 MS. MCCORMICK: Can you do that? I want  
23 you to really think about this.

24 PROSPECTIVE JUROR #3: Yes.

25 PROSPECTIVE JUROR #4: Hopefully.

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1 MS. MCCORMICK: Okay. You're honest.

2 Okay.

3 PROSPECTIVE JUROR #5: Yes.

4 PROSPECTIVE JUROR #6: Yes.

5 PROSPECTIVE JUROR #14: Yes.

6 PROSPECTIVE JUROR #13: Yes.

7 PROSPECTIVE JUROR #12: Yes.

8 PROSPECTIVE JUROR #11: I think I can.

9 PROSPECTIVE JUROR #10: Yes.

10 PROSPECTIVE JUROR #9: Yes.

11 PROSPECTIVE JUROR #8: Yes.

12 PROSPECTIVE JUROR #7: Yes.

13 MS. MCCORMICK: Thank you.

14 I guarantee you that somewhere along the  
15 line in this case, like I said, you heard the word  
16 "accident," you're going to feel sympathy. You're  
17 going to feel it. You're human beings. The reason  
18 you're here is to bring your life experiences into  
19 this courtroom. You would not be human if you did  
20 not feel sympathy during this case. You're likely  
21 to feel sympathy for the victims, for the people  
22 injured, but you may also feel sympathy for this  
23 young man sitting here on trial for these very  
24 serious charges.

25 I have to ask you specifically, Miss

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1 Swenson, you have a 25-year-old son. This man is  
2 about that age. Does the fact that you have a son  
3 that age, would that make you hesitate, even if you  
4 believed the evidence beyond a reasonable doubt, of  
5 convicting this man for murder?

6 PROSPECTIVE JUROR #9: No.

7 MS. MCCORMICK: No? You're sure?

8 PROSPECTIVE JUROR #9: Yes.

9 MS. MCCORMICK: You know I'm coming to  
10 you, Miss Tromp. Miss Tromp, you're in the same  
11 situation. You have a 25-year-old son. Has he ever  
12 been involved in something where you said, what are  
13 you crazy? How could you do such a thing? Has he  
14 ever done something like that?

15 PROSPECTIVE JUROR #1: Yes, of course.  
16 Yes, of course. Yes, I will probably hesitate  
17 seeing him comparing him to my son. I will feel  
18 sympathy.

19 MS. MCCORMICK: So you're going to--  
20 thanks for your honesty. Again, I appreciate that  
21 more than you know. It will be difficult for you to  
22 convict him even if the evidence is there because of  
23 the similarity to your own son's age?

24 PROSPECTIVE JUROR #1: Exactly.

25 THE COURT: In the final, analysis,



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1           however, could you do it?

2                   PROSPECTIVE JUROR #1: Can I say I will  
3           try or do I have to say yes or no?

4                   THE COURT: You don't have to say  
5           anything. I'm asking you if you're selected as a  
6           juror, despite the fact that you feel sympathy for  
7           another person, that when you deliberate with your  
8           fellow jurors and you all talk about the facts and  
9           you come to a particular conclusion, whatever that  
10          conclusion may be, can you come up with that  
11          conclusion?

12                   PROSPECTIVE JUROR #1: I don't know.

13                   MS. MCCORMICK: Your Honor, if I might,  
14          could you tell me how much time I have left? I  
15          don't want to--

16                   THE COURT: You have eight minutes.

17                   MS. MCCORMICK: Okay. Thank you.

18                   So then I've got to move along.

19                   Miss O'Hare, you're in the same boat. You  
20          have a 21-year-old son. Are you going to be able to  
21          convict a person who is so like in age to your own  
22          son?

23                   PROSPECTIVE JUROR #8: It depends on the  
24          facts.

25                   MS. MCCORMICK: But you will be able to

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1 set aside the fact that you have a near-aged son and  
2 listen to the evidence and make that decision?

3 PROSPECTIVE JUROR #8: Yes.

4 MS. MCCORMICK: I'm afraid, since I was  
5 checking the time, I didn't hear your bottom-line  
6 answer. Can you be a fair juror?

7 PROSPECTIVE JUROR #1: I said I don't  
8 know.

9 MS. MCCORMICK: Thank you.

10 Mr. Doyle, of course you've got a pile of  
11 kids, 32, 30, 27, 25. So what about you, sir?  
12 Would you be able to set aside any empathy you feel  
13 toward the defendant?

14 PROSPECTIVE JUROR #14: I believe so, yes.

15 MS. MCCORMICK: You do? Yes? Thank you.

16 You're going to hear from the judge that  
17 the heart of this case-- that the charge is murder,  
18 but it's something called depraved indifference.  
19 He's going to define that for you. You've said that  
20 you can follow the law as the judge gives it to you.  
21 Okay. But, you know, depraved indifference, it's a  
22 state of mind. As judges of the facts of what  
23 happened, you're going to have to come in and listen  
24 to the evidence and decide what was going on in his  
25 head at the time that this happened. That's not an

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1 easy task.

2 I can assure you, like I have assured you,  
3 you'll hear the word "accident" and that he did not  
4 intend to kill those people. You will not hear  
5 evidence that as he drove down the road he shouted  
6 out the window, I don't care what happens to  
7 anybody. You're not going to hear that.

8 So we put you in a position, as  
9 prospective jurors in this case, of having to decide  
10 what was in somebody's mind from the things they  
11 were doing. You probably do this every day. You  
12 know, you probably look at did my child mean to take  
13 that thing or did they just inadvertently take it?  
14 Did they get into that fight on purpose?

15 You assess credibility every day. You  
16 assess what people are thinking every day, but in a  
17 murder charge where you have to decide it based on  
18 what he did, the choices he made, is there anybody  
19 here who, on that fact alone, that you'll have to  
20 decide what's in somebody's head from what they were  
21 doing, what they chose to do, things they said in  
22 context, will you be able to do that?

23 PROSPECTIVE JUROR #6: Yes.

24 MS. MCCORMICK: Do you think so?

25 PROSPECTIVE JUROR #4: Yes.

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1 PROSPECTIVE JUROR #3: Yes.

2 PROSPECTIVE JUROR #2: Yes.

3 PROSPECTIVE JUROR #1: I think so.

4 PROSPECTIVE JUROR #7: Yes.

5 PROSPECTIVE JUROR #8: Yes.

6 PROSPECTIVE JUROR #9: Yes.

7 PROSPECTIVE JUROR #10: Yes.

8 PROSPECTIVE JUROR #11: Yes.

9 PROSPECTIVE JUROR #12: Yes.

10 PROSPECTIVE JUROR #13: Yes.

11 PROSPECTIVE JUROR #14: Yes.

12 MS. MCCORMICK: You can do that? Okay.

13 Thank you for thinking about it before you answered.

14 You realize, of course, what you find--

15 the decision you make at the end of the trial

16 doesn't have to be logical or reasonable or

17 sensible, you just have to find that's what it was.

18 Does the fact it doesn't have to make sense, that it

19 just is, does that trouble you on any level, that

20 you don't think you'll be able to do this? Anybody?

21 Show of hands?

22 I have to move this along or I'll get in

23 trouble with the judge. Thank you.

24 Is anybody sitting here so uncomfortable

25 with the notion of judging another person, you know,

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1 being a judge--

2 THE COURT: Hold on. Hold on. Nobody  
3 answer that question.

4 Nobody in this courtroom, myself included,  
5 is going to judge another person. If you are  
6 selected as jurors, you are going to decide facts  
7 which may or may not have happened. That's all  
8 you're doing. You're not judging any human being  
9 about anything. You're deciding whether certain  
10 facts happened or didn't happen.

11 MS. MCCORMICK: Thank you, Judge.

12 Actually, he made the point I was trying  
13 to get to. You would not be making a declaration on  
14 another person but on his acts and decisions and  
15 choices just at that time.

16 Do you each understand that? Does anybody  
17 have a problem with that?

18 (No response.)

19 No? Okay.

20 Alcohol is not on trial in this case.

21 Okay? Do we all understand if you're over the age  
22 of 21 that you're allowed to drink? Does everybody  
23 understand that?

24 Is there anybody here who does not consume  
25 alcohol ever?

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1 PROSPECTIVE JUROR #7: I don't.

2 MS. MCCORMICK: Do you have any strong  
3 feelings about people who do consume alcohol?

4 PROSPECTIVE JUROR #7: No.

5 MS. MCCORMICK: How about you?

6 PROSPECTIVE JUROR #5: No. If people  
7 desire to drink, they drink. It's their business.  
8 I choose not to drink, personally.

9 MS. MCCORMICK: Do we all also agree-- can  
10 you agree with me that even a person of age, if they  
11 choose to get drunk, falling down stumbling drunk,  
12 it's not a crime unless and until you get in a car?  
13 Would you agree with that? Do we all agree? Does  
14 anybody have issues with that?

15 You're a bartender, so you probably have  
16 had more experience with people drinking alcohol  
17 than most. How would you define somebody who is  
18 intoxicated?

19 PROSPECTIVE JUROR #2: It's tough.  
20 There's obviously varying levels, but it starts  
21 with-- the first one goes to-- you know, clear  
22 intoxication starts early. I don't know how to  
23 define it but--

24 MS. MCCORMICK: But you know it when you  
25 see it.

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1 PROSPECTIVE JUROR #2: Most times.

2 MS. MCCORMICK: As a bartender have you  
3 had experience with people who appear to be a good  
4 drunk?

5 PROSPECTIVE JUROR #2: Yeah.

6 MS. MCCORMICK: A person from the outside  
7 who looks like they can hold their liquor?

8 PROSPECTIVE JUROR #2: Yes.

9 MS. MCCORMICK: Have you had that  
10 experience?

11 Has anybody here had the experience of  
12 someone they know, a relative, maybe, who can really  
13 drink a lot and just does not look that bad on the  
14 outside?

15 So everybody knows somebody they call a  
16 "good drunk"?

17 PROSPECTIVE JUROR #12: I don't know any.

18 PROSPECTIVE JUROR #10: I don't know  
19 anybody like that.

20 THE COURT: Two minutes, Miss McCormick.

21 MS. MCCORMICK: Could we agree, all of us,  
22 that alcohol affects each individual differently?  
23 Would you agree with that?

24 PROSPECTIVE JUROR #4: Absolutely.

25 MS. MCCORMICK: Do we all agree with that?

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1 Do we agree someone's appearance on the  
2 outside doesn't necessarily match up with what's  
3 going on on the inside, depending upon how much  
4 alcohol someone consumed?

5 PROSPECTIVE JUROR #2: Yes.

6 MS. MCCORMICK: Would you agree someone  
7 who consumes a little bit can be stumbling and  
8 falling down just like someone who drank ten beers  
9 based on their tolerance, their personal tolerance?

10 PROSPECTIVE JUROR #2: Yes.

11 MS. MCCORMICK: Does everyone agree with  
12 that?

13 Since I have two minutes, I have to go  
14 quick. Do we all agree you're going to listen  
15 carefully to how alcohol affected Martin Heidgen on  
16 July 1st into July 2nd? Can you do that?

17 You're the experts in this case,  
18 toxicology and crash reconstruction, math and  
19 science. Is there anybody so intimidated by the  
20 prospect of scientific tests, some gas  
21 chromatographs, anybody intimidated by that that  
22 they can't endure listening to math formulas on this  
23 trial and they couldn't be fair? Do you all think  
24 you can do that?

25 You're all shaking your head. Thanks.



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1 I'm sorry I'm speeding right along here,  
2 but also along those lines, this is not-- who  
3 watches CSI? Anybody?

4 Okay. This is not CSI. Could we all  
5 agree on that? This is real life. We don't wrap it  
6 up neat and clean in an hour. Okay?

7 Do we all agree when you're judging-- when  
8 you're assessing credibility of real people that  
9 you'll take into consideration that people sometimes  
10 have inconsistencies and mistakes that aren't in the  
11 CSI script that don't necessarily affect outcomes?  
12 Can you agree with that?

13 THE COURT: That's time, Miss McCormick.

14 MS. MCCORMICK: Thank you, your Honor.

15 THE COURT: Mr. LaMagna?

16 MR. LAMAGNA: Thank you, your Honor.

17 Good morning, ladies and gentlemen, your  
18 Honor, Counsel, Mr. Martello, Mr. Heidgen, you heard  
19 from the Court and we heard from Miss McCormick what  
20 this endeavor is all about. It's about picking a  
21 fair and impartial jury.

22 Now, what I just want to pick up on is  
23 what Miss McCormick was just saying. This clearly  
24 is not CSI. In fact, this is real. This is real  
25 life. This isn't television. This isn't actors.

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1 You would agree?

2 PROSPECTIVE JUROR #6: Yes.

3 MR. LAMAGNA: This is about a person's  
4 life, and would you agree that inconsistencies,  
5 excuses and mistakes play no role here when a  
6 person's life is at stake? You would agree with  
7 that, right?

8 PROSPECTIVE JUROR #1: Yes.

9 MR. LAMAGNA: Would anybody disagree that  
10 in real life we're not looking for excuses or  
11 mistakes?

12 Wouldn't that be correct?

13 PROSPECTIVE JUROR #10: Correct.

14 MR. LAMAGNA: In fact, what we're looking  
15 for, ma'am, isn't it true, we want facts; is that  
16 correct?

17 PROSPECTIVE JUROR #8: Yes.

18 MR. LAMAGNA: Sir, you would want to be  
19 sure when the judge tells you about reasonable  
20 doubt, you'd want to make sure you don't have a  
21 reasonable doubt before you judge the facts against  
22 another human being. Don't you agree?

23 PROSPECTIVE JUROR #2: Yes.

24 MR. LAMAGNA: Does anybody disagree with  
25 that?

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1                   This is not CSI. This most certainly is  
2                   not television or the movies. This is real life.  
3                   As the assistant district attorney told you, my  
4                   client is charged with murder, murder for an  
5                   unintentional act, as she had told you, too.

6                   Now, you're going to hear a lot of  
7                   evidence-- Miss O'Hare is it? I'll put my glasses  
8                   back on. And I think everybody pretty much, except  
9                   for a couple, have said, you know, I've heard about  
10                  this case. You would agree, would you not, that  
11                  often times things in life aren't as simple as they  
12                  seem? Has anybody heard that expression?

13                  Mr. Essig?

14                  PROSPECTIVE JUROR #6: Yes.

15                  MR. LAMAGNA: Now, you knew I would be  
16                  starting with you. You're a New York City police  
17                  officer, correct?

18                  PROSPECTIVE JUROR #6: Correct.

19                  MR. LAMAGNA: You do investigations all  
20                  the time in your career, correct?

21                  PROSPECTIVE JUROR #6: That's correct.

22                  MR. LAMAGNA: Isn't it a fact an  
23                  investigation leads to a conclusion? In other  
24                  words, you gather facts before you make up your  
25                  mind?

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1 PROSPECTIVE JUROR #6: That's correct.

2 MR. LAMAGNA: You don't rush to judgment  
3 certainly, correct?

4 PROSPECTIVE JUROR #6: Correct.

5 MR. LAMAGNA: That would be incorrect.  
6 You'd want to know what actually happened based upon  
7 the facts, correct?

8 PROSPECTIVE JUROR #6: Yes.

9 MR. LAMAGNA: And Mr. Gutierrez?

10 PROSPECTIVE JUROR #3: Gutierrez.

11 MR. LAMAGNA: Gutierrez. I'm sorry.

12 I'm going to make a blanket apology to  
13 anybody's name I mispronounce. It happens to me all  
14 the time.

15 What I was asking you, then, is did you  
16 ever hear of an experience where a person who rushes  
17 to judgment fails to see the truth?

18 PROSPECTIVE JUROR #3: Absolutely.

19 MR. LAMAGNA: That's very important. You  
20 know, a cliché is often said because there's some  
21 truth in it.

22 Mr. Doyle?

23 PROSPECTIVE JUROR #14: Doyle.

24 MR. LAMAGNA: Would you agree with that?

25 PROSPECTIVE JUROR #14: Yes.

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1 MR. LAMAGNA: You're an engineer, aren't  
2 you?

3 PROSPECTIVE JUROR #14: Yes.

4 MR. LAMAGNA: You don't rush to judgment  
5 on things, correct?

6 PROSPECTIVE JUROR #14: Correct.

7 MR. LAMAGNA: If you rush to judgment, you  
8 may fail to see the truth, correct?

9 PROSPECTIVE JUROR #14: You can make a  
10 mistake.

11 MR. LAMAGNA: You can make a mistake.  
12 Now, you would agree, Miss Kwartler?

13 PROSPECTIVE JUROR #12: Kwartler.

14 MR. LAMAGNA: Kwartler.

15 Would you agree that in some endeavors in  
16 life, you know what? We make mistakes. They may  
17 not mean much. Sometimes something is so serious,  
18 you make a mistake, you can't afford to make a  
19 mistake. There's too much riding on it.

20 You would all agree that in a situation,  
21 if you're picked as a juror, with a person on trial,  
22 there's no room to make mistakes.

23 Would you agree, Miss Malcolm?

24 PROSPECTIVE JUROR #7: Yes.

25 MR. LAMAGNA: Would anybody disagree with

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1 that? There's no room for mistakes in situations  
2 like this, correct?

3 Now, the Judge has already articulated to  
4 you it's the district attorney who has the burden of  
5 proof in this case. Now, we've all heard that term.

6 Mr. Paul, do you promise you'll follow the  
7 directions by the Court when they say that the  
8 burden of proof is on the district attorney, it  
9 stays with the district attorney, and the defense  
10 has no burden of proof at all in this case?

11 PROSPECTIVE JUROR #2: Yes.

12 MR. LAMAGNA: Would you agree with that?

13 PROSPECTIVE JUROR #2: Yes.

14 MR. LAMAGNA: Does anybody instinctually  
15 or emotionally have a problem with that? Would  
16 anyone expect us, the defendant, to have to prove  
17 anything?

18 Mr. Espinosa, do you understand that the  
19 entire burden of proof is at that table and at that  
20 table only? You agree with that?

21 PROSPECTIVE JUROR #13: Right. Right.

22 MR. LAMAGNA: Miss Grasso-- I'm sorry--  
23 Mrs. Swenson?

24 PROSPECTIVE JUROR #9: Yes.

25 MR. LAMAGNA: Now, certainly I'm not going

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1 to sit here and do nothing during the trial. I am  
2 going to cross-examine witnesses. We may even  
3 produce witnesses. Just because I do that doesn't  
4 necessarily mean I now have a burden of proof,  
5 right?

6 PROSPECTIVE JUROR #9: Correct.

7 MR. LAMAGNA: The burden always stays with  
8 them, correct?

9 PROSPECTIVE JUROR #9: Yes.

10 MR. LAMAGNA: Now, there will be testimony  
11 concerning alcohol use. Is anybody familiar with  
12 any organizations like S.A.D.D. or M.A.D.D. or any  
13 of these other organizations? Is anybody a member  
14 or an affiliate or belongs to any of these  
15 organizations?

16 You understand that this is about facts,  
17 not about political agendas for any organization?

18 Mr. Gutierrez, do you agree with that?  
19 This isn't politics, right?

20 PROSPECTIVE JUROR #3: No.

21 MR. LAMAGNA: Your decision is not based  
22 upon what's popular or unpopular, correct?

23 PROSPECTIVE JUROR #3: No.

24 MR. LAMAGNA: Mr. Kircher?

25 PROSPECTIVE JUROR #4: Kircher.

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1 MR. LAMAGNA: You would agree that  
2 whatever your decision is, it's going to be based  
3 upon the facts and the evidence, not what is a  
4 desirable result, not what's undesirable, popular or  
5 otherwise?

6 PROSPECTIVE JUROR #4: Correct.

7 MR. LAMAGNA: It's justice.

8 PROSPECTIVE JUROR #4: That's right.

9 MR. LAMAGNA: It's whether they prove  
10 their case beyond a reasonable doubt, correct?

11 PROSPECTIVE JUROR #4: Absolutely.

12 MR. LAMAGNA: And if they haven't,  
13 Mr. Callaghan, what's your verdict?

14 PROSPECTIVE JUROR #11: If they haven't  
15 proved their case, it would have to be--

16 MR. LAMAGNA: Every single element.

17 PROSPECTIVE JUROR #11: Every single  
18 element, it would have to be a not guilty,

19 MR. LAMAGNA: Now, you're going to hear  
20 witnesses testify, and you're going to have to all  
21 judge the credibility of these witnesses.

22 Miss Kinnard?

23 PROSPECTIVE JUROR #5: Um-hum.

24 MR. LAMAGNA: You're going to have to  
25 determine whether or not a particular witness or a



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1 piece of evidence is credible, is believable. Do  
2 you understand?

3 PROSPECTIVE JUROR #5: Yes.

4 MR. LAMAGNA: And you would agree we do  
5 that all the time. In our everyday lives we make  
6 decisions on credibility all the time.

7 How many people have children?

8 You know, say there's a dispute between  
9 kids, you don't know what happened, or between  
10 friends or family or at work. You've got to decide  
11 who do I believe. We make those decisions all the  
12 time. Here we're going to have professional  
13 witnesses, we're going to have police witnesses,  
14 we're going to have civilian witnesses.

15 Mr. Essig?

16 PROSPECTIVE JUROR #6: Yes.

17 MR. LAMAGNA: Now, you're going to have to  
18 use all your life experiences, like everybody else,  
19 in making a determination of what you believe and  
20 whether or not a particular person is credible or  
21 not. You can do that, certainly, sir?

22 PROSPECTIVE JUROR #6: Yes.

23 MR. LAMAGNA: Can we all do that?

24 Now, again, as Miss McCormick said, this  
25 is a murder case, the most serious charge in our

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1 society.

2 Would it be fair to say, Miss Tromp, that  
3 in light of the serious nature of this case and the  
4 gravity of it, you will use a critical eye in making  
5 your determination of what you believe and whether  
6 or not a particular witness is credible? Would you  
7 do that?

8 PROSPECTIVE JUROR #1: Yes.

9 MR. LAMAGNA: Do we all agree that that is  
10 an important endeavor here?

11 Miss Grasso?

12 PROSPECTIVE JUROR #10: Yes.

13 MR. LAMAGNA: That because of the gravity  
14 of this charge, you can't make mistakes here?

15 PROSPECTIVE JUROR #10: Yes.

16 MR. LAMAGNA: You have to be sure. If  
17 you're not sure, not guilty.

18 PROSPECTIVE JUROR #10: Right.

19 MR. LAMAGNA: Now, would you promise me  
20 that you will look to witnesses to see whether or  
21 not a particular witness may have a bias not to tell  
22 the truth?

23 How about you, Mr. Doyle? A witness may  
24 all of a sudden change their testimony because it  
25 suits the position that they're on. Would that be

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1 something that would strike you as maybe this person  
2 is not credible?

3 PROSPECTIVE JUROR #14: If I believed it.

4 MR. LAMAGNA: Assuming that they changed  
5 their testimony to suit a particular side.

6 PROSPECTIVE JUROR #14: How would I know  
7 that?

8 MR. LAMAGNA: I'm asking you if somebody  
9 says A, and then all of a sudden now they come into  
10 the courtroom and they change their story from A and  
11 now they say B because it fits some other side,  
12 wouldn't that be something you would consider?

13 PROSPECTIVE JUROR #14: I guess I would in  
14 the context of everything else, yes.

15 MR. LAMAGNA: How about you?

16 PROSPECTIVE JUROR #6: Same, in the  
17 context of what's going on.

18 MR. LAMAGNA: For example, if, for  
19 example, if there's an expert and you have an  
20 engineer or somebody says, well, the light was red,  
21 and then the person who hired him needs the light to  
22 be green, and that expert changes his testimony or  
23 his report from red now to green, would that be  
24 something you would consider on credibility?

25 I'm asking you again.

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1 PROSPECTIVE JUROR #6: Yes.

2 MR. LAMAGNA: Mr. Doyle?

3 PROSPECTIVE JUROR #14: I'd think about  
4 it, yes.

5 MR. LAMAGNA: If an expert all of a sudden  
6 changes his report from one thing to another because  
7 he's being paid for his opinion, Miss Malcolm,  
8 wouldn't that be something you would consider?

9 PROSPECTIVE JUROR #7: Yes.

10 MR. LAMAGNA: How about you?

11 PROSPECTIVE JUROR #2: Yes.

12 MR. LAMAGNA: Mr. Gutierrez?

13 PROSPECTIVE JUROR #3: Yes.

14 MR. LAMAGNA: Would that be something that  
15 would concern you?

16 PROSPECTIVE JUROR #3: It would be  
17 questionable.

18 MR. LAMAGNA: All of a sudden testimony  
19 changes to a particular theory of the case to make  
20 the case sound better. Would that be something you  
21 would consider in judging the credibility of that  
22 witness?

23 PROSPECTIVE JUROR #3: Yes.

24 MR. LAMAGNA: How about you, Mr. Kircher?

25 PROSPECTIVE JUROR #4: Kircher.

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1 It sure would.

2 MR. LAMAGNA: Right? That shouldn't be  
3 happening, right?

4 Now, somebody gave a definition of an  
5 accident. Who gave that definition?

6 You did. Okay.

7 I'm not going to spend time on semantics  
8 of words. An accident, as you say, it's an  
9 unintentional act. Do we all agree with that? I'm  
10 not going to banter whether we call it a crash or an  
11 accident, whichever sounds maybe worse. We know  
12 what it is.

13 The issue is going to be under what  
14 circumstances, how this terrible tragedy occurred  
15 and why. And is it murder, to be held to the same  
16 standard as somebody who intentionally kills  
17 somebody in cold blood. That's what the issue is  
18 going to be here.

19 You will not hear from the defense this  
20 did not happen. This was a terrible tragedy of  
21 immeasurable proportion, and we all feel for this.  
22 This is terrible. However, two people did die, and  
23 we cannot change that, and four people were  
24 seriously injured.

25 When the judge related to you yesterday or

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1 today some of the facts, we all agree, do we not,  
2 Mr. Espinosa, that in a car accident, people could  
3 get gruesomely injured because of the nature of  
4 what's happening. It doesn't always mean it's a  
5 criminal case or it's not a criminal case. The fact  
6 is, people get hurt terribly in a car accident.

7 Would you agree, as an engineer?

8 PROSPECTIVE JUROR #14: Yes.

9 MR. LAMAGNA: We're not disputing these  
10 people died. We're certainly not disputing people  
11 being injured. I'm asking you the district attorney  
12 is going to bring in a lot of witnesses and produce  
13 a lot of evidence concerning the gruesomeness of how  
14 these people died. We are not disputing that. But  
15 yet you're going to end up having to sit through all  
16 of this.

17 What I'm saying to you is, Miss O'Hare, we  
18 would not be human if we didn't feel that sympathy,  
19 but what I'm asking you to do is not be persuaded by  
20 the use of sympathy and emotion, but look at the  
21 facts of the case. You're going to sit through all  
22 of this. We're not disputing it, but yet you're  
23 going to have to end up listening to it. And,  
24 unfortunately, Mr. Paul, one of the issues of how  
25 this young child died was she was decapitated. You

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1 can't change that. The judge told you that.

2 What I need to know from all of you is  
3 based upon the terrible emotional feelings you'll  
4 have, can you look at the evidence through this  
5 filter of emotion and get beyond that point and  
6 concentrate on how it happened, why it happened and  
7 under under what circumstances it happened?

8 Miss Kinnard?

9 PROSPECTIVE JUROR #5: Yes.

10 MR. LAMAGNA: We can't change how it  
11 happened. Accidents happen. Tragedies happen. You  
12 know, the issue here is going to be why, how, under  
13 what circumstances. Would you agree?

14 PROSPECTIVE JUROR #5: Yes.

15 MR. LAMAGNA: Does anybody-- and this is a  
16 critical point because this was a tragedy of  
17 immeasurable proportions, but you're going-- they're  
18 going to bring in witnesses who are going to be  
19 doctors, not photographs, but testimony concerning  
20 this. We know that. You know this now. What I'm  
21 saying is can you get beyond that and listen to the  
22 facts about what's germane here?

23 Miss Kinnard?

24 PROSPECTIVE JUROR #5: Yes.

25 MR. LAMAGNA: Now, the judge, Mr. Doyle,

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1 will give you the charge on what depraved  
2 indifference to human life means. Will you promise  
3 to follow that law--

4 PROSPECTIVE JUROR #14: Yes.

5 MR. LAMAGNA: --as it relates to this?

6 Now, if the district attorney doesn't  
7 prove the element of depraved indifference, the  
8 state of mind of depraved indifference, even if you  
9 feel my client is responsible for the accident but  
10 they don't prove the depraved indifference state of  
11 mind, that evil and wicked state, how would you  
12 vote? Not guilty.

13 PROSPECTIVE JUROR #14: Not guilty.

14 MR. LAMAGNA: Is there any hesitation by  
15 anybody that if they can't prove his state of mind  
16 as being depraved it's a not guilty? Does anybody  
17 have any question about that?

18 Mr. Callaghan?

19 PROSPECTIVE JUROR #11: How could you  
20 tell? I had a question.

21 MR. LAMAGNA: Well--

22 PROSPECTIVE JUROR #11: We're sitting  
23 through your dissertation about how you understand  
24 everything is an accident.

25 MR. LAMAGNA: I'm going to--



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1 PROSPECTIVE JUROR #11: You're saying  
2 there was a crash and two people passed away.

3 MR. LAMAGNA: That is a fact.

4 PROSPECTIVE JUROR #11: Then is the  
5 difference if your client wasn't driving?

6 MR. LAMAGNA: What I'm saying to you is--

7 PROSPECTIVE JUROR #11: I have a problem  
8 with the personal accountability.

9 MR. LAMAGNA: How about this: Let's say  
10 the district attorney doesn't prove that and the  
11 judge instructs you if you don't find that the  
12 district attorney has proved every element of the  
13 charges of murder, but I'm going to allow you to  
14 consider lesser charges where you may think he's  
15 guilty of that but not the murder, would you  
16 consider those lesser charges if the judge tells you  
17 to consider them?

18 PROSPECTIVE JUROR #11: Yes.

19 MR. LAMAGNA: You would agree,  
20 Mrs. Grasso, you would agree that simply because  
21 somebody may be accused of one crime, that person  
22 may not be guilty of that crime but may be guilty of  
23 some lesser crime?

24 PROSPECTIVE JUROR #10: Right.

25 MR. LAMAGNA: Until you hear the evidence

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1           you don't know.

2                   PROSPECTIVE JUROR #10: Right.

3                   MR. LAMAGNA: Now, Mr. Espinosa.

4                   PROSPECTIVE JUROR #6: Espinosa.

5                   MR. LAMAGNA: Would you agree with me that  
6           a person may be charged with one thing and maybe not  
7           guilty of that or maybe they don't prove that but  
8           they may prove something lesser? There's still  
9           culpability but not to what they're charged with.  
10          If the judge gives you those lessers, would you  
11          consider them?

12                   PROSPECTIVE JUROR #6: Yes.

13                   MR. LAMAGNA: How about Mrs. Tromp?

14                   PROSPECTIVE JUROR #1: Yes, I would  
15          consider them.

16                   MR. LAMAGNA: Right? Because it's  
17          possible somebody may not be guilty of this top  
18          charge but maybe something in between.

19                   Mr. Paul, have you ever heard the  
20          expression there are shades of gray in life?

21                   PROSPECTIVE JUROR #2: Yes.

22                   MR. LAMAGNA: They may seek a charge of  
23          murder, to be held to the same standard as somebody  
24          who, essentially, kills somebody in cold blood.  
25          That may not be what happened here. It may have

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1           been an accident but with liability.

2                       Would you agree that that's possible?

3                       PROSPECTIVE JUROR #2: Yeah.

4                       MR. LAMAGNA: Mr. Callaghan, is that  
5           possible?

6                       PROSPECTIVE JUROR #11: I'm not sure how  
7           you interpret liability. Is that the same as  
8           accountability?

9                       MR. LAMAGNA: Yes.

10                      PROSPECTIVE JUROR #11: It's not a civil  
11           case.

12                      MR. LAMAGNA: No. No. This is a criminal  
13           case. The judge will give you the charges which  
14           they have to be able to prove. If they haven't  
15           proved one, is it possible maybe they proved  
16           another?

17                      PROSPECTIVE JUROR #11: It's possible.

18                      MR. LAMAGNA: Okay.

19                      PROSPECTIVE JUROR #11: Depending on the--

20                      MR. LAMAGNA: Depending how you see the  
21           facts.

22                      PROSPECTIVE JUROR #11: Or if the judge  
23           were to give us alternate charges, how he would  
24           interpret those to see if the burden was met.

25                      MR. LAMAGNA: If there's an element

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1 missing out of any of these charges, how would you  
2 vote?

3 PROSPECTIVE JUROR #11: If they haven't  
4 proved their case, it would be not guilty.

5 MR. LAMAGNA: Would you agree-- I want  
6 everybody to hear this-- if there's, let's say, ten  
7 elements and they prove nine, that's pretty good,  
8 right? In normal things, nine out of ten is a 90.  
9 That's pretty good. But in this scenario, with so  
10 much on the line, and as the judge tells you, they  
11 have to prove every element, each individually  
12 beyond a reasonable doubt.

13 Now, what if they prove to your  
14 satisfaction nine out of ten elements beyond a  
15 reasonable doubt, but one element you're just not  
16 quite sure of and you have a doubt. How would you  
17 vote?

18 PROSPECTIVE JUROR #11: Depends on where  
19 that doubt was from.

20 MR. LAMAGNA: If there was a doubt, if  
21 there is a doubt-- well, okay.

22 How about Miss Grasso?

23 PROSPECTIVE JUROR #10: If there was  
24 doubt, I would have to say not guilty.

25 MR. LAMAGNA: Of course, if that's what

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1 the judge told you the law was. If there's ten  
2 elements and they only prove nine elements, then how  
3 would you vote?

4 PROSPECTIVE JUROR #10: What you are  
5 saying?

6 MR. LAMAGNA: I'm saying-- let's say for  
7 one charge they have to prove ten things to prove  
8 that one charge.

9 PROSPECTIVE JUROR #10: Ten things equals  
10 one and one equals no? I'd have to say no.

11 MR. LAMAGNA: You'd have to say no. Not  
12 guilty, right?

13 The judge will tell you as my client sits  
14 here he's presumed innocent. We don't have to prove  
15 anything. They have to prove it all to your  
16 satisfaction beyond a reasonable doubt, correct?

17 PROSPECTIVE JUROR #10: Yes.

18 MR. LAMAGNA: If there's 100 elements and  
19 they only prove 99 elements, how would you vote?  
20 Not guilty?

21 PROSPECTIVE JUROR #10: Yes.

22 MR. LAMAGNA: Could we all agree with  
23 that? No hesitation? Because if there's  
24 hesitation, if that is what the judge tells you the  
25 law is, we need to know that now. You may not be

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1 right to sit on this particular case. If you were  
2 sitting there-- that's the important thing with this  
3 kind of job, if you will, as a juror. I'm going to  
4 ask you to ask yourselves, you know, what if I was  
5 sitting there?

6 MS. MCCORMICK: Objection, Judge.

7 MR. LAMAGNA: Would you--

8 THE COURT: It's a fair question. I heard  
9 that question before. It's okay.

10 MR. LAMAGNA: So what I'm asking is just--  
11 we can't get into your heads, especially in these  
12 few minutes, so you have to ask yourselves and be  
13 honest with us, it's about fairness and justice and  
14 a person's life. If you were sitting there, would  
15 you feel comfortable, with the law that the judge  
16 just gave you, beyond a reasonable doubt, burden of  
17 proof, would you feel comfortable being where he is  
18 with you as a juror?

19 PROSPECTIVE JUROR #6: Yes.

20 PROSPECTIVE JUROR #5: Yes.

21 PROSPECTIVE JUROR #4: Yes.

22 PROSPECTIVE JUROR #3: Yes.

23 PROSPECTIVE JUROR #2: Yes.

24 MR. LAMAGNA: You're hesitating. You  
25 hesitated before.

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1 PROSPECTIVE JUROR #1: No.

2 PROSPECTIVE JUROR #14: Yes.

3 PROSPECTIVE JUROR #13: Yes.

4 PROSPECTIVE JUROR #12: I have a slight  
5 hesitation.

6 MR. LAMAGNA: That's okay.

7 PROSPECTIVE JUROR #12: I'm just being  
8 honest.

9 MR. LAMAGNA: I think that's wonderful. I  
10 think, as the Court said, there's no right or wrong  
11 answers here. The right answers are the open and  
12 honest answers, because you know what? You don't  
13 want to have to come to us in the middle of the  
14 trial and say, you know what? What I just heard,  
15 Mr. LaMagna, I'm sorry, I can't do this now. We  
16 don't want that.

17 So, please, anything, right now, this is  
18 the time. If there is any reservation, we have all  
19 these people here. If anybody has even the  
20 slightest reservation concerning the facts of this  
21 case, the gravity of the charge and the  
22 responsibility of doing what you're going to be  
23 asked to do, if you have any reservations and think  
24 you can't do it, please, now is the time.

25 Does anybody feel that after hearing this

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1 now, you know what? I rather be on a different type  
2 of case. Everybody feels they can do it, other than  
3 your reservation?

4 PROSPECTIVE JUROR #12: I have a slight  
5 reservation.

6 MR. LAMAGNA: Would you rather not be on a  
7 case like this because of your experiences and--

8 PROSPECTIVE JUROR #12: To be honest, yes.  
9 I have a lot of alcoholism in my family and a lot of  
10 people who have been hurt by alcoholism.

11 MR. LAMAGNA: You have a certain bias?

12 PROSPECTIVE JUROR #12: I think I have a  
13 bias towards there needs to be accountability, so  
14 I'm just being honest. When you drink, that should  
15 be taken into account.

16 MR. LAMAGNA: I understand.

17 Is there anybody else who feels the same  
18 way?

19 THE COURT: Two minutes, Mr. LaMagna.

20 MR. LAMAGNA: Thank you, your Honor.

21 With respect to how this accident  
22 occurred, do you realize that accidents can happen  
23 for a lot of reasons? Right? We all are aware of  
24 that.

25 Mr. Paul?



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1 PROSPECTIVE JUROR #2: Yep.

2 MR. LAMAGNA: There could be one reason  
3 for an accident occurring or a myriad of reasons all  
4 coming together causing an accident, correct?

5 PROSPECTIVE JUROR #2: Yes.

6 MR. LAMAGNA: Would you question whether  
7 the individual slowed down to try to self-correct,  
8 maybe too late? Would you question whether or not  
9 the street signs were okay or whether he's familiar  
10 with an area?

11 Mr. Espinosa, did you ever drive your own  
12 car in a place where you didn't know where you were  
13 going?

14 PROSPECTIVE JUROR #6: Yes.

15 MR. LAMAGNA: Maybe somewhere out of the  
16 State of New York or somewhere?

17 PROSPECTIVE JUROR #6: Yes, I have.

18 MR. LAMAGNA: Mr. Doyle, have you ever  
19 gotten lost driving?

20 PROSPECTIVE JUROR #14: Yes.

21 MR. LAMAGNA: When you're driving and get  
22 lost, what do you do? You kind of slow down, right?  
23 You try to get your bearings straight.

24 Have we all experienced that? We slow  
25 down and look for a sign, right?

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1 Miss Grasso, signs are for people who  
2 don't know where they're going, not for people who  
3 know where they're going.

4 PROSPECTIVE JUROR #10: Correct.

5 MR. LAMAGNA: Do you promise to consider  
6 all these things and what was happening that caused  
7 this accident, and if alcohol was involved, that's  
8 one aspect. The issue is going to be whether he  
9 acted with an evil, depraved mind-- okay? Do you  
10 understand that? --for murder. The judge may give  
11 you other lesser charges, that's one thing, but I'm  
12 talking about the murder case. Will you concentrate  
13 on all those issues?

14 Now, I need as my last question here a  
15 promise from all of you, and I think anybody who  
16 will be sitting where this young man is would ask  
17 the same question. Do you promise to make the  
18 prosecution fulfill its legal obligation to prove  
19 each and every element of the charge regardless of  
20 whether, under the circumstances, you think there's  
21 accountability or not? If their proof does not meet  
22 its burden beyond a reasonable doubt, every element,  
23 then it's not guilty. Remember, maybe guilty,  
24 possibly guilty, I think he's guilty is not enough.  
25 You agree with that, everybody? It's beyond a

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1 reasonable doubt.

2 THE COURT: That's time, Mr. LaMagna.

3 MR. LAMAGNA: Thank you, Judge.

4 Thank you, ladies and gentlemen.

5 THE COURT: At this time I'm going to give  
6 counsel a couple of minutes with their notes, then  
7 I'd like to see counsel at the bench.

8 (Whereupon, a discussion was held at the  
9 bench on the record.)

10 THE CLERK: People, challenges for cause,  
11 one through twelve?

12 MS. MCCORMICK: Number one.

13 THE COURT: Granted.

14 MS. MCCORMICK: Number four.

15 THE COURT: Denied.

16 MS. MCCORMICK: Mr. Kircher--

17 THE COURT: Denied. He rehabilitated  
18 himself. Denied.

19 MS. MCCORMICK: Exception noted, Judge.

20 THE COURT: Yes.

21 MS. MCCORMICK: He specifically said that  
22 in his experience, he thought that a false statement  
23 had been used against him.

24 THE COURT: He said that in the beginning,  
25 and he became fairer, fairer and fairer. He started

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1 to answer the questions like a fair juror.

2 Your challenge for cause is denied.

3 MS. MCCORMICK: Okay, your Honor.

4 THE CLERK: Anything else, People, one  
5 through twelve?

6 MS. MCCORMICK: No other for cause, Judge.

7 THE CLERK: Defense, first twelve,  
8 challenges for cause, one through twelve?

9 MR. LAMAGNA: One through twelve? Yes,  
10 number eleven.

11 THE COURT: Granted.

12 MR. LAMAGNA: And number twelve.

13 THE COURT: Granted.

14 MR. LAMAGNA: That's for cause.

15 THE CLERK: Any other challenges for  
16 cause, one through twelve?

17 MR. LAMAGNA: No.

18 THE CLERK: People, peremptory challenges,  
19 seats one through twelve?

20 MS. MCCORMICK: I'm sorry. Two, three and  
21 four, Judge.

22 Excuse me. Let me continue to look in the  
23 next row.

24 MR. LAMAGNA: So two, three and four?

25 MS. MCCORMICK: Yes.

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1 No others, Judge.

2 THE CLERK: Defense?

3 MR. LAMAGNA: Judge, I have number five,  
4 number six, number nine and number ten.

5 THE COURT: Okay. Let's do thirteen and  
6 fourteen.

7 THE CLERK: Seat number seven, which was  
8 Loy Malcolm, is now going to become juror number  
9 one. Seat number eight, which was Bette O'Hare, now  
10 becomes juror number two.

11 We're addressing thirteen and fourteen,  
12 People, for cause?

13 MS. MCCORMICK: None for cause.

14 THE CLERK: Defense, addressing thirteen  
15 and fourteen for cause?

16 MR. LAMAGNA: Thirteen and fourteen for  
17 cause? No.

18 THE CLERK: People, peremptory challenges  
19 as to seats thirteen and fourteen?

20 MS. MCCORMICK: I'm going to challenge  
21 number thirteen.

22 MR. LAMAGNA: Number thirteen?

23 MS. MCCORMICK: Yes.

24 THE CLERK: Nothing further from the  
25 People?

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1 MS. MCCORMICK: No, sorry.

2 THE CLERK: Defense, peremptory challenge  
3 on number fourteen?

4 MR. LAMAGNA: Number fourteen, yes.

5 THE CLERK: The People have used four and  
6 the defense has used five.

7 THE COURT: Okay.

8 (Whereupon, proceedings continue in open  
9 court.)

10 THE CLERK: If you hear your name called,  
11 please remain seated in the box:

12 Miss Malcolm and Miss O'Hare.

13 The rest of the jurors in the box, the  
14 Court would like to thank you for your service.  
15 Please follow the directions of the court officers.

16 (Whereupon, the unselected jurors were  
17 excused.)

18 (Whereupon, the jurors were duly sworn.)

19 THE COURT: Please have seats. What I'm  
20 going to do now, ladies and gentlemen, is I'm going  
21 to ask you to stay for this, even though you don't  
22 need to be back here until Monday at 9:30 in the  
23 morning. I have certain instructions which, when we  
24 break, I'm required by law to give you, but I don't  
25 want to send you off now with the admonitions then

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1 fill the box and say the admonitions all over again.  
2 I'd like the two of you to please sit down over  
3 here.

4 We're going to fill the box, then we're  
5 going to break for lunch. Those of you who are in  
6 the box at the time that we break, please remember  
7 the seat that you're in at 2:15 when we resume.  
8 When you come back in, please take those seats.

9 THE CLERK: Ladies and gentlemen, please  
10 have your questionnaires out and follow the  
11 directions of the court officers.

12 Seat number one, Eddie Piazza,  
13 P-I-A-Z-Z-A; seat number two, Henry Thom, T-H-O-M;  
14 seat number three, Brian Straker, S-T-R-A-K-E-R;  
15 seat number four, Lorissa Edom; E-D-O-M; seat number  
16 five, Nina Lanci, L-A-N-C-I; seat number six,  
17 William Donald, Jr., D-O-N-A-L-D; seat number seven,  
18 Matthew Lander, L-A-N-D-E-R; seat number eight,  
19 Thomas Mayernik, M-A-Y-E-R-N-I-K; seat number nine,  
20 Anthony Macchiarulo, M-A-C-C-H-I-A-R-U-L-O; seat  
21 number ten, Nina Ward, W-A-R-D; seat number eleven,  
22 Lillian Puleo, P-U-L-E-O.

23 (No response.)

24 THE CLERK: Seat number eleven, Michael  
25 Orena, O-R-E-N-A; seat number twelve, Marla DeJesus,

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1 D-E-J-E-S-U-S; seat number thirteen, Albert  
2 Giarretto, G-I-A-R-R-E-T-T-O; seat number fourteen,  
3 Lindsay Hamme, H-A-M-M-E.

4 THE COURT: Okay. Welcome, ladies and  
5 gentlemen, and ladies and gentlemen in the back, we  
6 are now breaking until 2:15. For your purposes, we  
7 are breaking until 9:30 Monday morning. Please be  
8 prompt, otherwise we can't stay to the schedule I  
9 told you about in the beginning.

10 For everybody in the room, all of you,  
11 until 2:15, and ladies, until 9:30 Monday morning,  
12 between now and then you must not discuss the case  
13 among yourselves or with anybody else. Do not form  
14 or express any opinions until the entire case has  
15 been completed and the Court has given you the  
16 charge as to the law. You must keep an open mind  
17 until all of the evidence is presented and you are  
18 charged as to the law.

19 You must not read or listen to any  
20 accounts or discussions of this case in the event it  
21 is reported by newspapers or other media. You must  
22 not visit or view the premises or place where the  
23 offense or offenses charged were allegedly committed  
24 or any other premises or place involved in the case.

25 You are not to permit any party to discuss



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1 the case with you or attempt to influence you.  
2 Promptly report to the Court any incident within  
3 your knowledge involving an attempt by any person  
4 improperly to influence any member of the jury.

5 Prior to discharge you may not accept any  
6 payment or benefit in consideration for supplying  
7 any information concerning this trial.

8 I advise you if at any time any  
9 participant of the trial should meet you outside the  
10 building, you may not speak to or even acknowledge  
11 them to avoid any appearance of impropriety.

12 Have a nice lunch.

13 Have a nice weekend.

14 (Whereupon, a luncheon recess was taken.)  
15

16 \* \* \* A F T E R N O O N S E S S I O N \* \* \*

17  
18 (Whereupon, the prospective jury panel  
19 entered the courtroom.)

20 THE CLERK: . Case on trial, indictment  
21 number 1910N-05, People v. Martin Heidgen.

22 People ready?

23 MR. HAYDEN: Ready, your Honor.

24 THE CLERK: Defendant ready?

25 MR. LAMAGNA: Defendant ready, your Honor.

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1 THE CLERK: The defendant is present your  
2 Honor.

3 THE COURT: Thank you.

4 All right. Standard introductory  
5 questions.

6 Any of you know any of us?

7 (No response.)

8 Does anybody know any names on the witness  
9 list I read off before?

10 (No response.)

11 Let me get to the issue I discussed with  
12 the previous panel. Many of you probably know  
13 something about this case through the last year from  
14 newspapers or TV or radio. Would that be correct?

15 Does anybody, as you sit here now, since  
16 you've heard no evidence yet, feel they are, as we  
17 sit here, influenced to such an extent that they  
18 could not give the defendant a fair trial?

19 You feel you could not, sir?

20 PROSPECTIVE JUROR #1: No.

21 THE COURT: All right. Go back to central  
22 jury, please.

23 (Whereupon, the prospective juror was  
24 excused.)

25 THE COURT: The rest of you are satisfied

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1 with the frames of mind that you have you are ready  
2 to listen to evidence and come to conclusions?

3 All right. Fill the box, please.

4 THE CLERK: Seat number one, Nelson  
5 Figueroa, F-I-G-U-E-R-O-A.

6 Please have your questionnaires out.

7 THE COURT: Mr. Figueroa, do you know any  
8 of us?

9 PROSPECTIVE JUROR #1: No.

10 THE COURT: Do you know anybody on that  
11 witness list?

12 PROSPECTIVE JUROR #1: No.

13 THE COURT: You may have heard something  
14 about this case before you got here. Do you feel  
15 like you're in a position to be fair to this man?

16 PROSPECTIVE JUROR #1: I don't know if I  
17 can be fair.

18 THE COURT: Go back to Supreme Court, sir.  
19 (Whereupon, the prospective juror was  
20 excused.)

21 THE CLERK: Seat number one, Stacey Haber,  
22 H-A-B-E-R.

23 THE COURT: Miss Haber, do you know any of  
24 us?

25 PROSPECTIVE JUROR #1: No.

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1 THE COURT: Do you know anybody on that  
2 list?

3 PROSPECTIVE JUROR #1: No, I don't.

4 THE COURT: You might have heard something  
5 about this case already. Are you in the right frame  
6 of mind to be fair to this man?

7 PROSPECTIVE JUROR #1: Yes.

8 THE COURT: Please have a seat.

9 Mr. Hayden, go ahead, please.

10 MR. HAYDEN: Good afternoon, ladies and  
11 gentlemen. Good afternoon. I'm Assistant District  
12 Attorney Bob Hayden. I and Miss McCormick represent  
13 Kathleen Rice, District Attorney of Nassau County.  
14 We're trying this case on behalf of the People of  
15 the State of New York.

16 I'm sure each of you has a mental picture  
17 of an intoxicated person, a drunk. Some of you may  
18 have a picture of a falling down drunk. When you  
19 picture an intoxicated person, some of you may  
20 picture a man so drunk he can't even walk. Some of  
21 you may picture a man so drunk he can't even talk.

22 Would each of you accept that when it  
23 comes to driving a car, the standard for  
24 intoxication may be different? Can everyone accept  
25 that?

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1                   Would each of you accept that when it  
2 comes to driving a car, the standard for  
3 intoxication should be different? True?

4                   Would each of you accept that a falling  
5 down drunk might not be able to find his car, much  
6 less drive it?

7                   Would each of you accept a falling down  
8 drunk might not find his keys, much less use them to  
9 get into his car behind a steering wheel?

10                  Would each of you accept a falling down  
11 drunk may not select an ignition key to use to drive  
12 that car?

13                  That's not what we're talking about here.  
14 Can each of you assure us you'll look at the  
15 defendant's driving in determining whether he's  
16 intoxicated in this case? Everyone?

17                  Would each of you accept that  
18 intoxication, social drinking, any kind of drinking  
19 is not on trial here? That's not what this is  
20 about. Can everyone accept that?

21                  There's nothing wrong with social  
22 drinking. I'm sure all of us, or most of us, have  
23 probably consumed alcohol during the course of life.  
24 There's nothing wrong with that. That has nothing  
25 to do with it. The charges in this case are much

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1 different than that.

2 Would each of you accept that drinking  
3 affects people differently? Everyone?

4 Some people are much more visibly affected  
5 by alcohol than others. Could everyone accept that?  
6 Some people are much less visibly affected by  
7 alcohol than others. Can everyone accept that?

8 You've learned that the defendant is  
9 charged with two counts of murder. You've learned  
10 that the defendant didn't intend to kill anyone.  
11 You'll learn that the defendant is not accused of  
12 intending to kill anyone. We're not alleging he  
13 intended to kill anyone.

14 You've learned that these murder charges  
15 involved depravity, not an intent to kill. These  
16 murder charges involve the use of a motor vehicle, a  
17 pick-up truck, not a gun or a knife or a club.

18 Do any of you feel you couldn't convict a  
19 man of murder unless he intended to kill? Anyone  
20 feel that way? It's not an unreasonable reaction.  
21 Do any of you feel that way? Anyone feel you can't  
22 convict a man with murder without an intent to kill?

23 Yes, sir?

24 PROSPECTIVE JUROR #13: I do.

25 MR. HAYDEN: You feel that way.

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1 Does anyone else feel that way?

2 THE COURT: Sir-- excuse me, Mr. Hayden.

3 Sir, I haven't instructed you yet on what  
4 the law is. Depraved indifference to human life in  
5 the State of New York is a frame of mind or a state  
6 of mind that could render a person guilty of the  
7 charge of murder as it is written in the  
8 legislature. Do you think you could listen to my  
9 explanation of the law and go along with what I have  
10 to tell you constitutes depraved indifference to  
11 human life?

12 PROSPECTIVE JUROR #13: Yes.

13 THE COURT: Okay.

14 MR. HAYDEN: You'd be able to do that even  
15 without an intent to kill; is that correct?

16 PROSPECTIVE JUROR #13: Yes.

17 MR. HAYDEN: Ma'am, how about you?

18 PROSPECTIVE JUROR #1: I would have to  
19 hear more specification.

20 MR. HAYDEN: Can all of you assure us  
21 you'll listen very carefully when Judge Honorof  
22 explains these murder charges? Everyone?

23 Can each of you assure us you'll listen  
24 carefully when Judge Honorof explains the elements  
25 of depraved murder? Everyone?

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1 Can each of you assure us you're going to  
2 accept the elements of depraved mind murder as Judge  
3 Honorof explains them? Everyone? Even if they  
4 don't include an intent to kill?

5 In the end, do each of you assure us you  
6 won't force us to prove intent to kill if the law  
7 doesn't require it? Everyone?

8 Defense counsel talked a lot about the  
9 state of mind. It's a state of mind. You've got to  
10 get into his head. You've learned that the  
11 defendant did not announce his state of mind. I'm  
12 really depraved, that's why I'm doing what I'm  
13 doing.

14 Can each of you assure us you're going to  
15 concentrate on the evidence in trying to determine  
16 the defendant's state of mind in spite of the fact  
17 he didn't announce it? Can everyone do that?

18 Can each of you assure us you're going to  
19 consider the observations of the defendant before he  
20 went out driving that night? Everyone? What he  
21 said? What he did?

22 Can each of you assure us you're going to  
23 consider the observations of the defendant while he  
24 was driving that night? Everyone?

25 Can each of you assure us you're going to



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1 consider what the defendant had to say about his  
2 state of mind after the collision that night?  
3 Everyone?

4 And can each of you assure us you're going  
5 to consider what he did? If you happen to see a man  
6 walk up to another man holding a gun to the side of  
7 his head to his temple and fire a shot, if the man  
8 goes down and he leans down and fires two more  
9 shots, you say, what did you do, and the man says, I  
10 didn't intend to kill him, would any of you accept  
11 that having seen what you saw? Anyone?

12 Can each of you assure us you're going to  
13 concentrate and consider what he was doing that  
14 night in determining his state of mind? Everyone?

15 Okay. Defense counsel talked about this  
16 not being CSI. Everyone accepts this isn't CSI,  
17 right? This is real. Remember, defense counsel  
18 told you this is real. The People, Miss McCormick  
19 and I, want to join with defense counsel and tell  
20 you this is very, very, very real. Make no mistake  
21 about it. And defense counsel told you this affects  
22 a human life. Yeah, it does. We agree. It affects  
23 that young man's life. Can everyone accept that?

24 Would each of you also accept this case  
25 affects a lot of human lives? Would you accept

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1 that?

2 Would all of you accept the fact this case  
3 affects human lives that were lost that night?

4 Would you accept that?

5 Would all of you accept the fact this case  
6 affects human lives of people that were badly  
7 injured that night? Everyone?

8 Defense counsel talked about the extent of  
9 injuries and said we agree-- both sides agree the  
10 injuries are horrific. The deaths are horrific.  
11 They're gruesome. Everyone concedes that.

12 What I'm going to ask is can you assure me  
13 you're going to consider the nature of these  
14 injuries in determining whether the conduct that  
15 produced these injuries was depraved? You'll  
16 consider the extent of the injury. Will you all do  
17 that?

18 Defense counsel asked the previous group  
19 of jurors have you ever gotten lost. Have you ever  
20 driven in a car and have gotten lost.

21 I'll ask you, ma'am, how about you?

22 PROSPECTIVE JUROR #1: Right.

23 MR. HAYDEN: Of course. Everyone?

24 Has any of you ever gotten lost and driven  
25 the wrong way on a parkway for more than three miles

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1           against oncoming traffic?

2                   MR. LAMAGNA: Objection.

3                   MR. HAYDEN: Anyone?

4                   THE COURT: Sustained.

5                   MR. HAYDEN: You can see that the  
6           defendant is a relatively young man who has been  
7           accused of a very serious crime. As has been  
8           mentioned before, you may feel sympathy, especially  
9           those of you who have 20, 25-year-old sons. There's  
10          nothing wrong with that. You're going to feel  
11          sympathy for the victims in this case, including the  
12          seven-year-old child.

13                   Would each of you assure us-- would each  
14          of you accept that as jurors you're going to be fact  
15          finders? Everyone?

16                   Would each of you accept as fact finders  
17          sympathy for anyone should have nothing to do with  
18          your finding of the facts? Everybody?

19                   Would each of you accept that as fact  
20          finders sentencing considerations should have  
21          nothing to do with your finding of the facts?  
22          Everyone?

23                   Would each of you accept as fact finders  
24          punishment should have nothing to do with your  
25          finding of facts? Can everyone accept that?

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1 Can each of you assure us as fact finders  
2 you're going to leave sentencing considerations  
3 where they belong, in Judge Honorof's hands? Can  
4 everyone do that?

5 Can each of you assure us as fact finders  
6 you're going to leave punishment where it belongs,  
7 in Judge Honorof's hands? Can you all agree and  
8 assure us you'll be able to do that and not concern  
9 yourselves with that?

10 Over the course of the presentation of  
11 evidence in this trial you're going to hear from a  
12 number of police officers. Do any of you have  
13 strong feelings about police officers, positive or  
14 negative, based upon anything you may have seen or  
15 heard or read? Anybody?

16 Anyone have strong feelings about police  
17 officers based on any personal experience? Anyone?

18 I'm sure most of you have received traffic  
19 tickets. Has anyone received a traffic ticket and  
20 felt unfairly about it?

21 How about you, sir?

22 PROSPECTIVE JUROR #6: No, I deserved it.

23 MR. HAYDEN: Does anyone feel you were  
24 treated with disrespect? Anybody at all?

25 Anything you heard so far which gives you

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1 any concern about your ability to be fair and  
2 impartial to both sides?

3 PROSPECTIVE JUROR #1: No.

4 MR. HAYDEN: I know you mentioned, ma'am,  
5 on your questionnaire that you know someone who has  
6 been accused of a crime.

7 PROSPECTIVE JUROR #1: Yes.

8 MR. HAYDEN: Tell us just a bit about  
9 that.

10 PROSPECTIVE JUROR #1: I was accused of a  
11 crime.

12 MR. HAYDEN: Is there anything about that  
13 experience that may affect you here?

14 PROSPECTIVE JUROR #1: I was a minor, no,  
15 so--

16 MR. HAYDEN: How do you feel you were  
17 treated?

18 PROSPECTIVE JUROR #1: Very fairly.

19 MR. HAYDEN: That wouldn't affect you at  
20 all?

21 PROSPECTIVE JUROR #1: No.

22 MR. HAYDEN: Mr. Thom, I noticed on your  
23 questionnaire you have the same thing checked off.  
24 You or someone you know has been accused of a crime?

25 PROSPECTIVE JUROR #2: Yes.

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1 MR. HAYDEN: Could you tell us about that?

2 PROSPECTIVE JUROR #2: It was me. I was  
3 accused of a crime.

4 MR. HAYDEN: How do you feel you were  
5 treated?

6 PROSPECTIVE JUROR #2: I thought I was  
7 treated fairly.

8 MR. HAYDEN: Is there anything about that  
9 experience that would affect you at all during the  
10 course of the presentation of evidence at this  
11 trial?

12 PROSPECTIVE JUROR #2: No.

13 MR. HAYDEN: Do you feel you can be fair  
14 and impartial to both sides?

15 PROSPECTIVE JUROR #2: Yes.

16 MR. HAYDEN: Nothing you heard so far  
17 gives you any concern?

18 PROSPECTIVE JUROR #2: No.

19 MR. HAYDEN: Mr. Straker, you mentioned on  
20 your questionnaire you've been the victim of a  
21 crime?

22 PROSPECTIVE JUROR #3: Someone in my  
23 family.

24 MR. HAYDEN: Would you tell us a bit about  
25 that?

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1 PROSPECTIVE JUROR #3: Robbed.

2 MR. HAYDEN: Is there anything about that  
3 experience that would affect you here?

4 PROSPECTIVE JUROR #3: No.

5 MR. HAYDEN: You mentioned on your  
6 questionnaire that you know members of law  
7 enforcement?

8 PROSPECTIVE JUROR #3: Yeah.

9 MR. HAYDEN: Tell us a bit about the  
10 people you know.

11 PROSPECTIVE JUROR #3: A friend of mine is  
12 a court officer.

13 MR. HAYDEN: A court officer? Is that in  
14 the city or here in Nassau County?

15 PROSPECTIVE JUROR #3: In the city.

16 MR. HAYDEN: Do you discuss his work with  
17 him?

18 PROSPECTIVE JUROR #3: Occasionally.

19 MR. HAYDEN: Anything about those  
20 conversations that might affect you here?

21 PROSPECTIVE JUROR #3: No.

22 MR. HAYDEN: Anything you've heard so far  
23 from anyone give you reason to think you might be  
24 less than fair and impartial?

25 PROSPECTIVE JUROR #3: No.

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1 MR. HAYDEN: Miss Edom, ma'am, I noticed  
2 you, too, had indicated on your questionnaire you or  
3 someone you know has been accused and convicted of a  
4 crime.

5 PROSPECTIVE JUROR #4: It was a mistake.

6 MR. HAYDEN: You crossed it out.

7 PROSPECTIVE JUROR #4: I crossed it out.

8 MR. HAYDEN: Anything you've heard so far  
9 which would lead you to believe you couldn't be fair  
10 and impartial, not only to the defendant, but to the  
11 People?

12 PROSPECTIVE JUROR #4: No.

13 MR. HAYDEN: Miss Lanci-- is that  
14 correctly pronounced?

15 PROSPECTIVE JUROR #5: Yes.

16 MR. HAYDEN: Anything you've heard, ma'am,  
17 that gives you any concern?

18 PROSPECTIVE JUROR #5: No.

19 MR. HAYDEN: You can be fair and  
20 impartial, not only to the People, but to the  
21 defendant?

22 PROSPECTIVE JUROR #5: Yes.

23 MR. HAYDEN: Mr. Donald, you indicated on  
24 your questionnaire that you or someone you know has  
25 been the victim of a crime?



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1 PROSPECTIVE JUROR #6: Yes.

2 MR. HAYDEN: Tell us about that.

3 PROSPECTIVE JUROR #6: Somebody stole my  
4 car.

5 MR. HAYDEN: Is there anything about that  
6 experience that would affect you one way or another  
7 here?

8 PROSPECTIVE JUROR #6: No, I don't think  
9 so.

10 MR. HAYDEN: Mr. Lander, you indicated on  
11 your questionnaire you or someone you know has been  
12 accused of a crime; is that right?

13 PROSPECTIVE JUROR #7: Yes.

14 MR. HAYDEN: Could you tell us a bit about  
15 that?

16 PROSPECTIVE JUROR #7: It was my mother.  
17 She was accused of a hit and run and leaving, and  
18 also my car was broken into.

19 MR. HAYDEN: Is there anything about your  
20 mom's experience that would affect you here?

21 PROSPECTIVE JUROR #7: No.

22 MR. HAYDEN: Do you feel your mom was  
23 treated fairly?

24 PROSPECTIVE JUROR #7: As far as I know,  
25 yes.

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1 MR. HAYDEN: Does she feel she was treated  
2 fairly?

3 PROSPECTIVE JUROR #7: Yes.

4 MR. HAYDEN: Anything about that  
5 experience that would influence you at all in the  
6 prosecution of this case?

7 PROSPECTIVE JUROR #7: No.

8 MR. HAYDEN: Mr. Mayernik-- correctly  
9 pronounced?

10 PROSPECTIVE JUROR #8: Yes.

11 MR. HAYDEN: Mr. Mayernik, anything you've  
12 heard from anyone, from Mr. LaMagna, from Miss  
13 McCormick, from myself or from his Honor, that would  
14 lead you to believe you couldn't be fair and  
15 impartial?

16 PROSPECTIVE JUROR #8: No.

17 MR. HAYDEN: Mr. Macchiarulo?

18 PROSPECTIVE JUROR #9: Macchiarulo.

19 MR. HAYDEN: You indicated, sir, that you  
20 served on a criminal jury?

21 PROSPECTIVE JUROR #9: Yes.

22 MR. HAYDEN: What type of case?

23 PROSPECTIVE JUROR #9: Robbery.

24 MR. HAYDEN: Anything about that  
25 experience that would influence you in any way here?

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1 PROSPECTIVE JUROR #9: No.

2 MR. HAYDEN: Any reason why you wouldn't  
3 want to serve?

4 PROSPECTIVE JUROR #9: No.

5 MR. HAYDEN: Miss Ward?

6 PROSPECTIVE JUROR #10: Yes.

7 MR. HAYDEN: Anything you've heard, Miss  
8 Ward, that gives you pause about your ability to sit  
9 fairly and impartially?

10 PROSPECTIVE JUROR #10: No.

11 MR. HAYDEN: Is there any reason why you  
12 wouldn't want to sit?

13 PROSPECTIVE JUROR #10: It's a lengthy  
14 trial. That's about it.

15 MR. HAYDEN: Can you assure us, with the  
16 understanding it could go as long as five weeks,  
17 you'd be able to give us your full, undivided  
18 attention?

19 PROSPECTIVE JUROR #10: If I was chosen to  
20 serve, yes, I would.

21 MR. HAYDEN: Mr. Orena?

22 PROSPECTIVE JUROR #11: Yes.

23 MR. HAYDEN: Anything you heard that gives  
24 you concern about your ability to be fair and  
25 impartial, not only to the defense, but to the

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1 prosecution, as well?

2 PROSPECTIVE JUROR #11: No.

3 MR. HAYDEN: Miss DeJesus, correctly  
4 pronounced, ma'am?

5 PROSPECTIVE JUROR #12: Yes.

6 MR. HAYDEN: Ma'am, you indicated on your  
7 questionnaire that you know people in law  
8 enforcement?

9 PROSPECTIVE JUROR #12: Yes.

10 MR. HAYDEN: Could you tell us about those  
11 people?

12 PROSPECTIVE JUROR #12: My best friend's  
13 husband.

14 MR. HAYDEN: Where does he work?

15 PROSPECTIVE JUROR #12: Suffolk County.

16 MR. HAYDEN: What type of work does he do?

17 PROSPECTIVE JUROR #12: He is a state  
18 trooper.

19 MR. HAYDEN: Have you discussed his work  
20 with him?

21 PROSPECTIVE JUROR #12: No.

22 MR. HAYDEN: Anything about your  
23 relationship with him that would affect you here?

24 PROSPECTIVE JUROR #12: No.

25 MR. HAYDEN: You can treat a police

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1 officer like anybody else?

2 PROSPECTIVE JUROR #12: Yes.

3 MR. HAYDEN: Mr. Giarretto, correctly  
4 pronounced?

5 PROSPECTIVE JUROR #13: Yes.

6 MR. HAYDEN: Sir, you indicated you know  
7 people in law enforcement?

8 PROSPECTIVE JUROR #13: Yes.

9 MR. HAYDEN: Who are they?

10 PROSPECTIVE JUROR #13: My uncle. He's a  
11 retired New York City cop.

12 MR. HAYDEN: What type of work did he do  
13 for the NYPD?

14 PROSPECTIVE JUROR #13: I'm not sure.

15 MR. HAYDEN: Okay. Ever discuss his work  
16 with him?

17 PROSPECTIVE JUROR #13: No.

18 MR. HAYDEN: Anything about that  
19 relationship that would affect you here?

20 PROSPECTIVE JUROR #13: No.

21 MR. HAYDEN: You would treat police  
22 officers like anyone else?

23 PROSPECTIVE JUROR #13: Yes.

24 THE COURT: Two minutes.

25 MR. HAYDEN: Yes, your Honor.

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1 Anything you've heard so far that would  
2 lead you to believe you couldn't be fair and  
3 impartial to either side?

4 PROSPECTIVE JUROR #13: No.

5 MR. HAYDEN: Miss Hamme, anything that  
6 you've heard so far that gives you concern that you  
7 couldn't be fair and impartial?

8 PROSPECTIVE JUROR #14: No.

9 MR. HAYDEN: Any reason why you wouldn't  
10 want to serve?

11 PROSPECTIVE JUROR #14: I'm getting  
12 married in a month. We'll be out of New York for  
13 the majority of next month.

14 MR. HAYDEN: Okay. So the time  
15 constraints would prevent you from serving?

16 PROSPECTIVE JUROR #14: Exactly.

17 MR. HAYDEN: Thank you all for your kind  
18 attention.

19 THE COURT: Mr. LaMagna?

20 MR. LAMAGNA: Thank you.

21 Good afternoon, ladies and gentlemen.

22 Now, you have had the benefit of listening to the  
23 first round and some of the questions and some of  
24 the comments that both the district attorney and I  
25 have made. Does anything strike you other than what

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1 most people have answered that's unusual, whether  
2 it's about the burden of proof or reasonable doubt  
3 or any of those basic concepts that the Court  
4 ultimately will be giving you?

5 We all accept it's the district attorney  
6 that has the burden of proof. As my client sits  
7 here right now, he is presumed innocent. Isn't that  
8 right, Mr. Lander?

9 PROSPECTIVE JUROR #7: Yes.

10 MR. LAMAGNA: Miss Haber?

11 PROSPECTIVE JUROR #1: Yes.

12 MR. LAMAGNA: So if the judge, as I think  
13 he might have asked the last panel, if you were to  
14 vote right now, it's not guilty, correct? We all  
15 agree with that?

16 Now, most of us have read something about  
17 this case, I think we've all said, most of us. Now,  
18 you understand anything you read in the paper may  
19 not be the whole truth. Would you all agree with  
20 that?

21 There could be reasons, Mr. Macchiarulo--  
22 did I get that right?

23 PROSPECTIVE JUROR #9: Close enough.

24 MR. LAMAGNA: Close. I have the same  
25 problem with my name.

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1 Not everything you read in the paper is  
2 necessarily accurate. You can agree with that?

3 PROSPECTIVE JUROR #9: Of course.

4 MR. LAMAGNA: Would you agree there may be  
5 reasons, maybe to sell newspapers, they may  
6 sensationalize a case? We've all seen that, haven't  
7 we?

8 So what's very important, Mr. Straker, is  
9 that we need to know, all of us need to know,  
10 whether or not it's possible to wipe out everything  
11 that you may have heard, may have seen, may have  
12 discussed concerning this case, and listen only to  
13 the evidence that's presented in this case on that  
14 witness stand. Can you do that?

15 Can everybody do that?

16 It's not easy to wipe something out when  
17 you think you know something. Is that fair to say,  
18 Mr. Donald?

19 PROSPECTIVE JUROR #6: That's correct.

20 MR. LAMAGNA: Can you do that?

21 PROSPECTIVE JUROR #6: I'll try my best.

22 MR. LAMAGNA: Let me ask you this: Has  
23 anybody formed an opinion about, well, based upon  
24 what you read or maybe what you have heard in this  
25 case, has anybody formed an opinion concerning this



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1 case?

2 PROSPECTIVE JUROR #6: I don't think so.

3 MR. LAMAGNA: This is the time to--

4 PROSPECTIVE JUROR #6: I know. I know. I  
5 know.

6 MR. LAMAGNA: So you may have?

7 PROSPECTIVE JUROR #6: Yeah.

8 MR. LAMAGNA: Is that a yes or--

9 THE COURT: Can you form an opinion  
10 without hearing what the law is?

11 PROSPECTIVE JUROR #6: No.

12 THE COURT: I haven't explained the law to  
13 anybody. None of you heard any evidence.

14 MR. LAMAGNA: So you'll keep an open mind  
15 knowing the Court is going to give you the law of  
16 exactly what depraved indifference to human life is?

17 Now, if the judge were to tell you just by  
18 merely a person being intoxicated and causing a  
19 terrible accident like that, in and of itself, by  
20 itself, does not constitute murder, would you follow  
21 that law?

22 PROSPECTIVE JUROR #6: I'll wait to hear  
23 what the judge says.

24 MR. LAMAGNA: But if he says that to you?

25 PROSPECTIVE JUROR #6: Yeah.

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1 MR. LAMAGNA: Do we all understand that  
2 there's another element to this, it's a depraved  
3 indifference to human life, to be held to the same  
4 accountability as one who intentionally, in cold  
5 blood, killed somebody. That's what they have to  
6 prove, not just that he may have been drinking, not  
7 that he may have been responsible for causing a  
8 terrific accident, that's one thing.

9 THE COURT: Excuse me, Mr. LaMagna. I  
10 don't want the lawyers to try to explain the law to  
11 you. They will inadvertently confuse you. I will  
12 give you the smallest of examples about what  
13 depraved indifference is just so you can focus on it  
14 as the lawyers might discuss it with you.

15 If you were to take a loaded gun and fire  
16 it into a darkened theater, you may not  
17 intentionally be trying to kill anyone, but the fact  
18 that somebody does die, your state of mind at that  
19 time when you fired that gun was depraved  
20 indifference to human life. You didn't necessarily  
21 intend to kill anyone, but your state of mind at the  
22 time renders you liable in the State of New York to  
23 answer to the charge of murder.

24 MR. LAMAGNA: Thanks.

25 Miss Edom?

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1 PROSPECTIVE JUROR #4: Edom.

2 MR. LAMAGNA: Do you believe that young  
3 people may drink more than older people? Does  
4 anybody feel that way?

5 Mr. Donald?

6 PROSPECTIVE JUROR #6: Yes.

7 MR. LAMAGNA: Do you feel that way?

8 Would you agree that that's a result of  
9 maturity, growing up, life experiences and things  
10 like that?

11 Mr. Lander?

12 PROSPECTIVE JUROR #7: Yeah.

13 MR. LAMAGNA: Would you agree,  
14 Mr. Mayernik, that sometimes young people do foolish  
15 and irresponsible things not realizing the  
16 consequences of their actions, and that's part of  
17 maturity?

18 PROSPECTIVE JUROR #8: Only minors or--

19 MR. LAMAGNA: No. I'm saying--

20 PROSPECTIVE JUROR #8: Yeah.

21 MR. LAMAGNA: Can we all accept that  
22 concept, Mr. Giarretto, that sometimes young people  
23 do foolish and irresponsible things which may cause  
24 terrible tragedy, but that happens. Would you  
25 agree?

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1 PROSPECTIVE JUROR #13: I would agree. I  
2 don't think it's just young people. Older people do  
3 also.

4 MR. LAMAGNA: I agree with you.

5 Now, would you agree, Mr. Orena, that if  
6 somebody acts in a terribly foolish or irresponsible  
7 way and ultimately causes a tragedy, that doesn't  
8 necessarily mean they have a depraved mind, being  
9 held to the same standard as somebody who  
10 intentionally killed somebody. Would you agree with  
11 that?

12 PROSPECTIVE JUROR #11: Yes.

13 MR. LAMAGNA: Mrs. DeJesus?

14 PROSPECTIVE JUROR #12: Yes.

15 MR. LAMAGNA: Would you agree with that?

16 PROSPECTIVE JUROR #12: Yes.

17 MR. LAMAGNA: Mrs. Ward, would you agree  
18 with that?

19 PROSPECTIVE JUROR #10: Yes.

20 MR. LAMAGNA: Does anybody disagree with  
21 that?

22 You will wait to hear actual evidence,  
23 Mrs. Lanci, of whether this was a terrible tragedy  
24 as a result-- we know what resulted. The issue is  
25 is it murder. That's what we're going to be talking

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1 about, and I had asked the last panel if the judge  
2 gives you the opportunity to consider lesser  
3 charges, would you consider those if the judge gives  
4 them to you?

5 PROSPECTIVE JUROR #5: Yes.

6 MR. LAMAGNA: Will we all consider those  
7 if the judge gives them to you?

8 Now, Mr. Straker, you would agree, would  
9 you not, that simply because somebody may be charged  
10 with something, they can be overcharged, too? Do we  
11 all agree with that, too?

12 And somebody, Mr. Thom, could be charged  
13 with something and be not guilty of that charge but  
14 maybe they are guilty of something lesser. Would  
15 you agree with that?

16 PROSPECTIVE JUROR #2: Yes.

17 MR. LAMAGNA: Would we all agree with  
18 that?

19 Now, accidents can occur for many reasons.

20 Miss Haber, would you agree?

21 PROSPECTIVE JUROR #1: Yes.

22 MR. LAMAGNA: It may be one reason, it  
23 could be a confluence of many reasons.

24 PROSPECTIVE JUROR #1: Yes.

25 MR. LAMAGNA: Would you promise in judging

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1 this case, Mr. Orena, that you will consider the  
2 road conditions, how much traffic was on the road,  
3 whether the roadway was safely designated with  
4 proper signage?

5 PROSPECTIVE JUROR #11: Yes.

6 MR. LAMAGNA: Would you promise that you  
7 will look, Mr. Thom, to whether or not, in causing  
8 the accident, that Mr. Heidgen attempted to try to  
9 correct but it was just too late? Would that be  
10 something you would consider?

11 PROSPECTIVE JUROR #2: I don't know.

12 MR. LAMAGNA: You would not consider that?

13 PROSPECTIVE JUROR #2: I don't know.

14 MR. LAMAGNA: Does anybody feel they  
15 wouldn't consider what he was doing while he was  
16 driving, like Mr. Thom?

17 PROSPECTIVE JUROR #2: Can you repeat the  
18 question?

19 MR. LAMAGNA: Would you consider the  
20 manner in which he was driving to determine whether  
21 he was depraved, if he was trying to self-correct,  
22 to get safe, but it was just too late?

23 PROSPECTIVE JUROR #2: I don't know.

24 MR. LAMAGNA: Would anybody consider that?  
25 Does anybody feel that's something that's not

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1 appropriate?

2 PROSPECTIVE JUROR #6: Yes.

3 MR. LAMAGNA: Of course you would consider  
4 that to determine was he trying to avoid this. That  
5 would, would it not, negate whether or not he was  
6 depraved at the time.

7 Mr. Mayernik?

8 PROSPECTIVE JUROR #8: Mayernik.

9 MR. LAMAGNA: Now, we know, Mr. Mayernik,  
10 what happened here, but simply knowing the result of  
11 what happened doesn't necessarily help us about how  
12 it happened, why it happened and under what  
13 circumstances, correct?

14 PROSPECTIVE JUROR #8: Right.

15 MR. LAMAGNA: Some people, we would agree,  
16 would we not, Miss Lanci, are bad, evil people, and  
17 they do bad and evil things. Wouldn't you agree  
18 with that?

19 PROSPECTIVE JUROR #5: Yes.

20 MR. LAMAGNA: Some people, would you  
21 agree, Mr. Lander, are good people that may do a bad  
22 thing?

23 PROSPECTIVE JUROR #7: Yeah.

24 MR. LAMAGNA: It's going to be your  
25 determination to say although something tragic

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1 happened, it was a tragedy, it may very well be a  
2 liability for but not murder. Would you all  
3 consider that?

4 For example, you drive on the road-- just  
5 as an example, somebody drives. Let's say they're  
6 lost or they're not paying attention. A squirrel  
7 comes across the street. We've all seen that. He  
8 hits the squirrel. That person caused a tragedy. I  
9 mean, people love animals, but he wasn't depraved  
10 from other people, even if he was drunk. Other  
11 people could be driving who are not even drunk at  
12 all and sees a squirrel and speeds up trying to see  
13 it run, and he ends up killing it because he didn't  
14 care whether it died or it didn't die, he was just  
15 trying to see it scurry. See the difference between  
16 those two people? Do we all see that?

17 That's what you're going to be  
18 determining, not just simply whether there was  
19 alcohol involved, whether there was drinking  
20 involved. We all agree people do irresponsible  
21 things, that's not murder. What was in his mind?  
22 Was he evincing that evil wickedness?

23 Now, you're going to base your decision,  
24 are you not, Miss Hamme--

25 PROSPECTIVE JUROR #14: Hamme.



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1 MR. LAMAGNA: --based upon the quality of  
2 evidence produced by the District Attorney's Office,  
3 right?

4 PROSPECTIVE JUROR #14: Um-hum.

5 MR. LAMAGNA: Not the quantity of it. Did  
6 you ever hear it's quality, not quantity?

7 PROSPECTIVE JUROR #14: Yes.

8 MR. LAMAGNA: Now, if, for example, there  
9 are inconsistencies with which an important witness  
10 is testifying, we have to judge credibility. Would  
11 that be something you would consider in judging a  
12 person's credibility?

13 PROSPECTIVE JUROR #14: Yes.

14 MR. LAMAGNA: Sir?

15 PROSPECTIVE JUROR #6: (Indicating.)

16 MR. LAMAGNA: For example, if somebody  
17 gets hired as an expert to give their opinion for  
18 one side or the other, and let's say he makes an  
19 opinion and it doesn't fit their theory and all of a  
20 sudden he changes it. Would that be something you  
21 would consider in judging the credibility of that  
22 so-called expert?

23 PROSPECTIVE JUROR #6: Of course.

24 MR. LAMAGNA: Because people have motives,  
25 whether it's for a particular party that's paying

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1           them. Would you agree, Mr. Lander?

2                   PROSPECTIVE JUROR #7: Yes.

3           MR. LAMAGNA: Would you determine this  
4           expert is nothing more than a hired gun to testify  
5           in any way that suits his employer?

6                   PROSPECTIVE JUROR #7: Um-hum.

7           MR. LAMAGNA: Certainly, would we all  
8           agree to do that?

9                   Now, Mr. Straker, if mistakes are made,  
10           critical mistakes, and then all of a sudden they're  
11           fixed, paperwork is changed, would that be something  
12           you would be a little suspicious of in judging the  
13           credibility of a witness like that?

14                   PROSPECTIVE JUROR #3: Yes.

15           MR. LAMAGNA: Especially in a case like  
16           this?

17                   PROSPECTIVE JUROR #3: Yeah.

18           MR. LAMAGNA: Where a person is charged  
19           with murder?

20                   PROSPECTIVE JUROR #3: Um-hum.

21           MR. LAMAGNA: This isn't going to be about  
22           excuses or mistakes. We want quality evidence,  
23           don't we? We want to be sure before we make a  
24           decision concerning this man's life, don't we?

25                   Mr. Straker?

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1 PROSPECTIVE JUROR #3: Yes.

2 MR. LAMAGNA: Now, we wouldn't be human if  
3 we didn't feel pain, even anger, for what happened  
4 in a terrible tragedy like this. The problem is,  
5 though, we have to be able to get beyond that, to  
6 look at the facts.

7 Does anybody feel that simply because this  
8 tragedy occurred, you know what, I've heard it all,  
9 I can't think. I can't do this. Does anybody feel  
10 like that?

11 (No response.)

12 I take the silence as a no? You'll all be  
13 able to do that?

14 Just remember, I was talking about that  
15 filter of emotion. This person is here on trial for  
16 murder. If you're a juror, if you're picked as a  
17 juror, you're going to have to make that sober-- to  
18 use that word-- decision about whether or not they  
19 have proved their case beyond a reasonable doubt.

20 Mr. Donald, now let's say there's five  
21 elements and they only proved four. How would you  
22 vote?

23 PROSPECTIVE JUROR #6: If--

24 MR. LAMAGNA: I'm sorry. Did I catch you?  
25 If I said they had to prove five elements to prove

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1 murder and they only proved four, how do you vote?

2 PROSPECTIVE JUROR #6: Not guilty for

3 that.

4 MR. LAMAGNA: Is there any hesitation by  
5 anybody, sir, that if they don't prove all of the  
6 elements of murder, that's a not guilty?

7 PROSPECTIVE JUROR #9: According to what  
8 you say.

9 MR. LAMAGNA: If the judge tells you you  
10 have to prove A, B, C and D and they only prove A,  
11 B, and C, they don't prove D, how do you vote?

12 PROSPECTIVE JUROR #9: Not guilty.

13 MR. LAMAGNA: Even if they proved A, B and  
14 C, then there's no doubt-- you have a doubt on D,  
15 how do you vote?

16 PROSPECTIVE JUROR #9: Beyond a reasonable  
17 doubt.

18 MR. LAMAGNA: Then it would be not guilty,  
19 right?

20 PROSPECTIVE JUROR #9: Correct.

21 MR. LAMAGNA: Does everybody agree with  
22 that?

23 Mr. Giarretto?

24 PROSPECTIVE JUROR #13: Yes.

25 THE COURT: Two minutes, Mr. LaMagna.

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1 MR. LAMAGNA: Thank you, your Honor.

2 Now, alcohol affects everybody. Would we  
3 agree, Mr. Giarretto, that alcohol could also  
4 diminish your response time to something?

5 PROSPECTIVE JUROR #13: Yes.

6 MR. LAMAGNA: That your perception may be  
7 dulled, that you don't react fast enough as you  
8 would, Mr. Orena, had you not been drinking?

9 PROSPECTIVE JUROR #11: Yes.

10 MR. LAMAGNA: The judge will tell you what  
11 depraved indifference means. So simply because a  
12 tragedy occurred, if they don't prove a depraved-- a  
13 state of mind of depravity, and the judge gives you  
14 the opportunity for a lesser offense, would you  
15 consider that?

16 PROSPECTIVE JUROR #11: Yes.

17 MR. LAMAGNA: I'm going to ask everybody  
18 what I asked the last panel. Given the gravity of  
19 this charge against this young man, if you were  
20 sitting where he is, would you want yourself to be a  
21 juror on this case?

22 PROSPECTIVE JUROR #6: I think so.

23 PROSPECTIVE JUROR #5: Yes.

24 PROSPECTIVE JUROR #4: Yes.

25 MR. LAMAGNA: No hesitation? This is the

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1 time to respond. If you can't, that's okay.

2 Is that how you feel?

3 PROSPECTIVE JUROR #4: Yes.

4 MR. LAMAGNA: You can do this?

5 PROSPECTIVE JUROR #4: Yes.

6 MR. LAMAGNA: Sir?

7 PROSPECTIVE JUROR #3: Yeah.

8 PROSPECTIVE JUROR #2: Yeah.

9 PROSPECTIVE JUROR #1: Yes.

10 PROSPECTIVE JUROR #7: Yes.

11 PROSPECTIVE JUROR #8: Yes.

12 MR. LAMAGNA: Could I ask you, you're  
13 involved with the Bellmore School District?

14 PROSPECTIVE JUROR #5: Bellmore Central  
15 High School.

16 MR. LAMAGNA: Do you know Michelle  
17 LaMagna?

18 PROSPECTIVE JUROR #5: The central high  
19 school has over 600 employees.

20 MR. LAMAGNA: I'm just trying to make sure  
21 that you don't know me.

22 THE COURT: That's time, Mr. LaMagna.

23 MR. LAMAGNA: Thank you, your Honor.

24 THE COURT: At this time I'm going to give  
25 everybody in the courtroom a five or ten-minute .

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1 break.

2 You're going to want to talk about the  
3 case. Please don't talk about the case. It would  
4 not be fair. You have to be fair. Don't talk about  
5 the case.

6 See you in five or ten minutes.

7 (Whereupon, the jury panel exited the  
8 courtroom.)

9 (Whereupon, a brief recess was taken.)

10 THE CLERK: People, challenges for cause,  
11 seats one through ten?

12 MR. HAYDEN: None for cause, your Honor.

13 THE CLERK: Defense, challenges for cause,  
14 one through ten?

15 MR. LAMAGNA: Judge, six, Mr. Donald.

16 THE COURT: Denied.

17 THE CLERK: Anything further?

18 MR. LAMAGNA: That's it one through ten.

19 THE CLERK: Thank you.

20 People, peremptory challenges, one through  
21 ten?

22 MR. HAYDEN: Number one, number seven and  
23 number ten, your Honor.

24 THE CLERK: Defense counsel, peremptory  
25 challenges, seats one through ten?

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1 MR. LAMAGNA: Number three, number four,  
2 number five and number eight.

3 THE CLERK: Juror number three will be  
4 Mr. Thom, juror number four will be Mr. Donald,  
5 juror number five will be Mr. Macchiarulo.

6 Seats eleven through fourteen, People,  
7 challenges for cause?

8 MR. LAMAGNA: Your Honor. I'm sorry. I'm  
9 sorry.

10 THE COURT: Hold on.

11 MR. LAMAGNA: I had on my sheet for cause.  
12 I had forgotten that you had denied the cause for  
13 number six.

14 THE COURT: Okay. You would like to use a  
15 peremptory challenge; is that correct?

16 MR. LAMAGNA: Yes.

17 THE COURT: So that makes juror number  
18 nine juror number four.

19 THE CLERK: That's Anthony Macchiarulo.

20 People, we're addressing seats eleven  
21 through fourteen at this time. Challenges for  
22 cause?

23 MR. HAYDEN: Miss Hamme, your Honor.

24 THE COURT: Pardon?

25 MR. HAYDEN: Miss Hamme?



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1 THE COURT: Granted.

2 THE CLERK: Any further applications for  
3 cause, eleven through fourteen?

4 MR. HAYDEN: No, your Honor.

5 THE CLERK: Defense, challenges for cause,  
6 seats eleven through fourteen?

7 MR. LAMAGNA: No, thank you.

8 THE CLERK: People, peremptory challenges,  
9 seats eleven through fourteen?

10 MR. HAYDEN: Eleven and thirteen, your  
11 Honor.

12 THE CLERK: Defense counsel, peremptory  
13 challenges, seat number twelve?

14 MR. LAMAGNA: Seat number twelve.

15 THE COURT: Okay. We've got two. Round  
16 three in two minutes.

17 (Whereupon, a brief recess was taken.)

18 (Whereupon, the prospective jury panel  
19 entered the courtroom.)

20 THE CLERK: Case on trial, indictment  
21 number 1910N-05, People v. Martin Heidgen.

22 People ready?

23 MR. HAYDEN: People ready, your Honor.

24 THE CLERK: Defendant ready?

25 MR. LAMAGNA: Defendant ready, your Honor.

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1 THE CLERK: The defendant is present, your  
2 Honor.

3 THE COURT: Would you take over, please,  
4 Jean?

5 THE CLERK: The two names I call out,  
6 please remain seated: Henry Thom and Anthony  
7 Macchiarulo, remain seated in the box.

8 Everyone else in the box, you're excused  
9 with the thanks of the Court. Please follow the  
10 directions of the officers.

11 (Whereupon, the unselected prospective  
12 jurors exit the courtroom.)

13 (Whereupon, the jurors were duly sworn.)

14 THE COURT: As you know, it's my hope to  
15 be able to start this trial in terms of opening  
16 statements and testimony on Monday morning.  
17 Sometimes I'm wrong, but I need you to be here  
18 Monday morning at 9:30, no later. Please bring a  
19 book that morning to read. You're way ahead of me.  
20 You already know the admonitions I gave to you right  
21 before lunch. Please observe them.

22 Have a nice weekend. We'll see you  
23 Monday. Thank you.

24 (Whereupon, the jurors exit the  
25 courtroom.)

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1 THE CLERK: Ladies and gentlemen, have  
2 your questionnaires out and available and follow the  
3 instructions of the officers, please.

4 Seat number one, Mary Bastien,  
5 B-A-S-T-I-E-N.

6 (No response.)

7 Seat number one, Diana Rodriguez,  
8 R-O-D-R-I-G-U-E-Z; seat number two, Tiranda Griffin,  
9 G-R-I-F-F-I-N; seat number three, Enandanie,  
10 E-N-A-N-D-A-N-I-E, last name Bherwani,  
11 B-H-E-R-W-A-N-I; seat number four, Russell Zucker,  
12 Z-U-C-K-E-R; seat number five, Robert Pike, P-I-K-E;  
13 seat number six, Lisa Cartegena, C-A-R-T-E-G-E-N-A;  
14 seat number seven, Nicole Memnon, M-E-M-N-O-N; seat  
15 number eight, Patrick Clark, C-L-A-R-K; seat number  
16 nine, Michael Colantonio, C-O-L-A-N-T-O-N-I-O; seat  
17 number ten, Craig Cavaco, C-A-V-A-C-O; seat number  
18 eleven, Ronald Ricardo.

19 (No response.)

20 Seat number eleven, Kenneth Kim, K-I-M;  
21 seat number twelve, Calvin Chung.

22 (No response.)

23 Seat number twelve, Patrick Nielsen,  
24 N-I-E-L-S-E-N; seat number thirteen, Sylvia  
25 Goldkranz, G-O-L-D-K-R-A-N-Z; seat number fourteen,

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1 Elvis Dacosta, D-A-C-O-S-T-A.

2 THE COURT: Welcome. Just to make sure we  
3 have a full pack, do any of you know any of us?

4 (No response.)

5 Did any of you recognize any of the names  
6 I read on the witness list?

7 Ma'am?

8 PROSPECTIVE JUROR #7: I know the family,  
9 the Flynn family.

10 THE COURT: Go back to central jury,  
11 ma'am.

12 (Whereupon, the prospective juror was  
13 excused.)

14 THE CLERK: Seat number seven, Joseph  
15 Carola, C-A-R-O-L-A.

16 THE COURT: Mr. Carola, before you go up  
17 there, do you know any of us?

18 PROSPECTIVE JUROR #7: No, sir.

19 I am an attorney. I did have a deposition  
20 with Mr. Flynn three or four years ago.

21 THE COURT: Go back to central jury, sir.

22 THE CLERK: Seat number seven, Laura  
23 Montaniao, M-O-N-T-A-N-I-A-O.

24 THE COURT: Go back and get your  
25 questionnaire. We'll call someone else.

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1 THE CLERK: Seat number seven, Thomas  
2 Augustine, A-U-G-U-S-T-I-N-E.

3 THE COURT: Mr. Augustine, do you know any  
4 of us?

5 PROSPECTIVE JUROR #7: No.

6 THE COURT: Do you know anybody on the  
7 witness list?

8 PROSPECTIVE JUROR #7: No.

9 THE COURT: Have a seat.

10 Let's get back to the issue of how much  
11 about this case did any of you know before you got  
12 here? Is it fair to say that many of you knew  
13 something of this case before you got here for jury  
14 selection? Yes? Fair to say? Raise your hands if  
15 you knew something about the case.

16 Despite whatever you may have heard of the  
17 case or about the case, as jurors you have heard no  
18 evidence at all. Do any of you feel as you sit here  
19 now that because of whatever it is you know or  
20 thought you knew about this case that you're not  
21 inclined to sit fairly at the present time?

22 All of you can be fair as you sit here,  
23 despite anything you might have heard of the case?

24 Great.

25 Miss McCormick?

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1 MS. MCCORMICK: Thank you.

2 Good afternoon. Good afternoon. I can't  
3 decide whether you're at an advantage or  
4 disadvantage having sat through everything else  
5 that's gone on before. I guess you know what's  
6 coming. We'll start with that.

7 Let me ask first, who here drives a car?  
8 Everyone almost?

9 Not you?

10 PROSPECTIVE JUROR #2: Yes.

11 MS. MCCORMICK: Do you drive a car?

12 PROSPECTIVE JUROR #1: No.

13 MS. MCCORMICK: Have you ever driven a  
14 car?

15 PROSPECTIVE JUROR #1: No.

16 MS. MCCORMICK: You live in Nassau County?

17 PROSPECTIVE JUROR #1: I take the train.

18 MS. MCCORMICK: Okay. Has anyone been  
19 involved in a traffic crash of any sort? Show of  
20 hands?

21 Did any of those traffic crashes result in  
22 serious injury or criminal charges being brought?

23 You had your hand up momentarily, sir?

24 PROSPECTIVE JUROR #5: No.

25 MS. MCCORMICK: Lawsuits. Anybody

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1 involved in a lawsuit as a result of a traffic  
2 crash?

3 (No response.)

4 No? Okay.

5 Then let me go onto the next question.

6 And I apologize if it seems intrusive in your lives,  
7 but do you know of anyone or have you, yourselves,  
8 ever been accused of driving while intoxicated? I'm  
9 going to go down the line. I didn't spend too much  
10 time on this before.

11 Can you tell us a little bit about that?

12 PROSPECTIVE JUROR #1: Yes. A friend of  
13 mine was arrested for driving while impaired and he  
14 pled guilty.

15 MS. MCCORMICK: Was there anything about  
16 that or was your friend unfairly treated by the  
17 police or anybody--

18 PROSPECTIVE JUROR #1: No.

19 MS. MCCORMICK: --in any way, shape or  
20 form that would affect your ability to be a fair  
21 juror in this case?

22 PROSPECTIVE JUROR #1: No.

23 MS. MCCORMICK: Nothing from you?

24 PROSPECTIVE JUROR #3: No.

25 PROSPECTIVE JUROR #4: No.

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1 MS. MCCORMICK: Sir, do you know anyone?

2 PROSPECTIVE JUROR #5: No.

3 Miss Cartegena?

4 PROSPECTIVE JUROR #6: No.

5 PROSPECTIVE JUROR #7: Yes, several of my  
6 friends. One in particular was a roommate. He was  
7 in a drunk driving accident.

8 MS. MCCORMICK: Was anybody seriously  
9 injured?

10 PROSPECTIVE JUROR #7: He was injured.

11 MS. MCCORMICK: He was accused of driving  
12 drunk?

13 PROSPECTIVE JUROR #7: Um-hum.

14 MS. MCCORMICK: Okay. When you say  
15 several of your friends--

16 PROSPECTIVE JUROR #7: Two others, but not  
17 as close as he was. They were just accused.

18 MS. MCCORMICK: They're still pending?

19 PROSPECTIVE JUROR #7: They're still  
20 pending.

21 MS. MCCORMICK: Are they pending here in  
22 Nassau County?

23 PROSPECTIVE JUROR #7: One. I'm not sure  
24 if one is in Suffolk.

25 MS. MCCORMICK: Is there anything about



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1 that, your friends having been accused, is there  
2 anything about that, your one friend had a crash,  
3 that would impact on your ability to sit as a fair  
4 juror in this case?

5 PROSPECTIVE JUROR #7: No.

6 MS. MCCORMICK: What about the issue  
7 itself of driving while intoxicated and the driving  
8 while intoxicated laws? Do you have a gut reaction  
9 of them being fair or unfair or anything like that?

10 PROSPECTIVE JUROR #7: No, it's fair. I  
11 can be fair.

12 MS. MCCORMICK: So the fact your friends  
13 have been accused is not bothersome to you in  
14 sitting in this case?

15 PROSPECTIVE JUROR #7: No.

16 MS. MCCORMICK: Okay. I have to check the  
17 time.

18 Do you know anybody, Mr. Clark?

19 PROSPECTIVE JUROR #8: No.

20 MS. MCCORMICK: Mr. Cavaco?

21 PROSPECTIVE JUROR #10: I was convicted  
22 eight years ago.

23 MS. MCCORMICK: I appreciate your honesty,  
24 sir.

25 Was that the only time you have ever been

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1 accused?

2 PROSPECTIVE JUROR #10: Yes.

3 MS. MCCORMICK: When you say you were

4 "convicted," did you take the case to trial?

5 PROSPECTIVE JUROR #10: No.

6 MS. MCCORMICK: You pled guilty?

7 PROSPECTIVE JUROR #10: I pled guilty.

8 MS. MCCORMICK: Is there anything about  
9 that in your life which would prevent you from being  
10 a fair juror in this case?

11 PROSPECTIVE JUROR #10: No.

12 MS. MCCORMICK: You believe-- you didn't  
13 feel you were unfairly treated?

14 PROSPECTIVE JUROR #10: I was not unfairly  
15 treated.

16 MS. MCCORMICK: Okay. Is there anything  
17 else that we should know about that would prevent  
18 you from being a fair juror? That's all. I'm not  
19 trying to pry about anything in your life. Is there  
20 anything about that that bothers you? Since the  
21 accusation is depraved indifference, certainly it's  
22 not all about driving while intoxicated, but is  
23 there anything about it that troubles you?

24 PROSPECTIVE JUROR #10: No.

25 MS. MCCORMICK: Okay, sir.

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1 Mr. Kim, do you know of anyone?

2 PROSPECTIVE JUROR #11: A good friend of  
3 mine died in an accident in Queens.

4 MS. MCCORMICK: He suffered serious  
5 injuries?

6 PROSPECTIVE JUROR #11: His passenger  
7 suffered serious injuries.

8 MS. MCCORMICK: Was your friend the person  
9 accused of driving drunk?

10 PROSPECTIVE JUROR #11: Yes.

11 MS. MCCORMICK: Were there charges that  
12 stemmed from that?

13 PROSPECTIVE JUROR #11: He hit into a  
14 tree, so, yeah. Not criminal, but he was  
15 prosecuted.

16 MS. MCCORMICK: He was prosecuted for DWI?

17 PROSPECTIVE JUROR #11: Yes.

18 MS. MCCORMICK: And with respect to your  
19 friend, was there anything about that incident, the  
20 way he was treated, the fact he was charged, that  
21 hits too close to home for you to be on this  
22 particular jury?

23 PROSPECTIVE JUROR #11: No.

24 MS. MCCORMICK: What about the fact he got  
25 into a crash and this is about a DWI crash, at least

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1 on some level? Does that bother you at all as a  
2 juror?

3 PROSPECTIVE JUROR #11: No.

4 MS. MCCORMICK: You can be fair and  
5 impartial?

6 PROSPECTIVE JUROR #11: Yes.

7 MS. MCCORMICK: How about you,  
8 Mr. Nielsen? Do you know anybody?

9 PROSPECTIVE JUROR #12: No.

10 MS. MCCORMICK: Ms. Goldkranz?

11 PROSPECTIVE JUROR #13: No.

12 MS. MCCORMICK: Mr. Dacosta?

13 PROSPECTIVE JUROR #14: No.

14 MS. MCCORMICK: Okay. Thank you very much  
15 for your honesty. I appreciate that very much.

16 You all heard the earlier discussions  
17 about following the law, my dad and the seat belt  
18 thing? I did that loud enough so you could all hear  
19 that.

20 If you are going to sit as a juror on this  
21 case, you're going to have to be able to swear to  
22 follow the law as the judge gives it to you,  
23 regardless of how you feel about it, even if after  
24 you've been listening to it you say to yourself  
25 that's crazy. I don't have to be worried about

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1           that? You can be like my dad? Even though he  
2           thinks the seat belt laws are intrusive, in his  
3           words, if he was a sworn juror on a seat belt case,  
4           he would swear to follow that law even though he  
5           disagreed with it.

6                     Are you able to do that, Miss Rodriguez?  
7           Can you follow what the judge tells you and put your  
8           own feelings aside?

9                     Please think about this. I'm going to ask  
10          you all. It's very important.

11                    PROSPECTIVE JUROR #1: Yes.

12                    MS. MCCORMICK: Miss Griffin?

13                    PROSPECTIVE JUROR #2: Yes.

14                    MS. MCCORMICK: You can do that, Miss  
15          Bherwani?

16                    PROSPECTIVE JUROR #3: Yes.

17                    MS. MCCORMICK: Mr. Zucker?

18                    PROSPECTIVE JUROR #4: Yes.

19                    MS. MCCORMICK: Mr. Pike?

20                    PROSPECTIVE JUROR #5: Yes.

21                    MS. MCCORMICK: Miss Cartegena?

22                    PROSPECTIVE JUROR #6: Yes.

23                    MS. MCCORMICK: Mr. Augustine?

24                    PROSPECTIVE JUROR #7: Yes.

25                    MS. MCCORMICK: Mr. Clark?

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1 PROSPECTIVE JUROR #8: Yes.

2 MS. MCCORMICK: Mr. Colantonio?

3 PROSPECTIVE JUROR #9: Yes.

4 MS. MCCORMICK: If I mispronounce your  
5 name, I apologize.

6 Mr. Cavaco?

7 PROSPECTIVE JUROR #10: Yes.

8 MS. MCCORMICK: Mr. Kim?

9 PROSPECTIVE JUROR #11: Yes.

10 MS. MCCORMICK: Mr. Nielsen?

11 PROSPECTIVE JUROR #12: Yes.

12 MS. MCCORMICK: Miss Goldkranz?

13 PROSPECTIVE JUROR #13: Yes.

14 MS. MCCORMICK: Mr. Dacosta?

15 You can all follow the judge's  
16 instructions?

17 Going along those lines, you just heard  
18 the defense attorney get up and in rather animated  
19 terms keep saying this is depraved murder,  
20 tantamount to cold-blooded murder. Do you  
21 understand that the instructions on a depraved mind  
22 are going to come from the judge, and there's  
23 nothing in those instructions about it being  
24 cold-blooded murder. It's not about an intentional  
25 murder.

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1 Do we all agree that you're going to  
2 listen to the judge for your instructions? Do we  
3 agree on the fact this is not about an intentional  
4 murder?

5 You heard earlier that no one is going to  
6 say that the defendant, Martin Heidgen,  
7 intentionally got in a car that night with the idea,  
8 with the intent, to go out and kill people. That  
9 fact-- and because this charge is called murder,  
10 he's going to define it for you. You're going to  
11 apply the facts to his definition.

12 But are you able, do you think, to follow  
13 the law and convict somebody of murder when it  
14 wasn't their intent to kill somebody? That's not  
15 part of what we have to prove. Do you think you can  
16 do that, if we meet our burden of proof?

17 PROSPECTIVE JUROR #1: Yes.

18 MS. MCCORMICK: The burden of proof, of  
19 course, is that we have to show that he had a  
20 depraved mind, that he just didn't care about what  
21 was going to happen to himself or anybody else that  
22 night. Can you find somebody guilty of murder if we  
23 meet that burden of proof? Can you do it?

24 PROSPECTIVE JUROR #2: Yes.

25 MS. MCCORMICK: Miss Bherwani?

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1 PROSPECTIVE JUROR #3: Yes.

2 MS. MCCORMICK: Mr. Zucker?

3 PROSPECTIVE JUROR #4: Yes.

4 MS. MCCORMICK: How about-- I'm going to  
5 ask you all, is there anybody who is troubled that  
6 the charge itself doesn't involve the defendant  
7 intending to kill somebody but it's called murder?  
8 Is there any gut reaction, any-- even a subliminal  
9 or subconscious reaction to that? Anybody?

10 Mr. LaMagna was just talking about how--  
11 he asked the jury whether in their experience young  
12 people maybe drink more than older people, and there  
13 were some smiles, maybe a little laughter. Of  
14 course in human experience would it be fair to say  
15 that all people drink according to their own social  
16 wants, needs, or don't drink at all?

17 Is there anybody in the jury box who does  
18 not-- has not consumed alcohol? Is there anybody  
19 who doesn't drink at all for any reason? Nobody?

20 So like everybody else, then, do you  
21 understand that alcohol is not on trial in this  
22 case, that you're allowed to drink alcohol? Do you  
23 understand that you're allowed to get absolutely  
24 obliterated as long as you don't drive a car? Do  
25 you understand that?



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1 PROSPECTIVE JUROR #5: Yes.

2 MS. MCCORMICK: Is there anybody who  
3 thinks there's a dispersion cast on drinking at all  
4 because of the facts of this case?

5 What do you think?

6 PROSPECTIVE JUROR #1: Um-hum.

7 MS. MCCORMICK: You think it looks badly--  
8 people who drink are looked upon worse than people  
9 who don't drink or do you think it's about driving a  
10 car?

11 PROSPECTIVE JUROR #1: I think it's about  
12 driving a car.

13 MS. MCCORMICK: What about you, sir, and  
14 your friends? Is there a distinction in your mind  
15 about drinking or it's just driving a car after  
16 you've been drinking is the problem?

17 PROSPECTIVE JUROR #7: Yes.

18 MS. MCCORMICK: Okay. Mr. LaMagna also  
19 talked in his last round of jury selection about  
20 things you should consider, things that the jury  
21 should consider in determining the state of mind of  
22 the defendant. You know, there are some things I'm  
23 going to ask you whether or not you will take into  
24 account.

25 You know, this is not a case about

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1 squirrels. I understand he was trying to make an  
2 analogy about squirrels and crossing the road and  
3 aiming for squirrels and not aiming for squirrels,  
4 but do you think there's something in between the  
5 aiming for the squirrel and the not seeing the  
6 squirrel and the not caring whether there's anything  
7 in the way?

8 Would you all agree to consider, when you  
9 listen to the judge's charge, when you're thinking  
10 about state of mind, you'll think about the actions?  
11 From the evidence that you're going to hear, you'll  
12 consider whether the defendant's state of mind was  
13 one of not caring? Can you think about that as you  
14 listen to the evidence?

15 Can you do that?

16 PROSPECTIVE JUROR #1: Um-hum.

17 MS. MCCORMICK: Can you do that?

18 PROSPECTIVE JUROR #2: Yes.

19 PROSPECTIVE JUROR #5: Yes.

20 MS. MCCORMICK: Can you do that?

21 PROSPECTIVE JUROR #6: Yes.

22 MS. MCCORMICK: Everybody?

23 Do you think that because a person is  
24 young and does foolish things, as the defense  
25 attorney said, that that is an excuse for not

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1 thinking about consequences, not thinking about  
2 things that are obvious and serious and dangerous?  
3 Is that an excuse? Do you think so?

4 PROSPECTIVE JUROR #6: No.

5 MS. MCCORMICK: Do you think it should be  
6 allowed to be a defense?

7 PROSPECTIVE JUROR #5: No.

8 MR. LAMAGNA: Objection, Judge.

9 THE COURT: Sustained.

10 MS. MCCORMICK: Do you think it's an  
11 excuse?

12 PROSPECTIVE JUROR #3: No.

13 PROSPECTIVE JUROR #2: No.

14 PROSPECTIVE JUROR #1: No.

15 PROSPECTIVE JUROR #7: No.

16 MS. MCCORMICK: What about you, sir?

17 PROSPECTIVE JUROR #8: Age?

18 MS. MCCORMICK: That a person is young,  
19 somehow that absolves responsibility for  
20 consequences of their actions? You don't think so?

21 PROSPECTIVE JUROR #8: No.

22 MS. MCCORMICK: They should be held  
23 equally accountable for the obvious results and  
24 choices they make.

25 Do you think so, Mr. Colantonio?

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1 PROSPECTIVE JUROR #9: Yes.

2 MS. MCCORMICK: How about you?

3 PROSPECTIVE JUROR #10: No.

4 MS. MCCORMICK: Would you consider, as  
5 you're listening to the evidence and whether the  
6 defendant had a depraved state of mind, a disregard  
7 for human life, his own included? Would you  
8 consider-- the defense attorney talked about actions  
9 to correct, to slow down, to avoid a crash. I'm  
10 going to ask you the opposite. Will you consider  
11 the failure to act, the failure to avoid the crash  
12 or to get out of the way as something that might  
13 show you the state of mind of the defendant at the  
14 time of the crash? Would you think about that, if  
15 someone failed to take an opportunity to get out of  
16 the way?

17 What do you think?

18 PROSPECTIVE JUROR #2: Yes.

19 PROSPECTIVE JUROR #7: Yes.

20 PROSPECTIVE JUROR #9: Yes.

21 PROSPECTIVE JUROR #10: Yes.

22 PROSPECTIVE JUROR #11: Yes.

23 MS. MCCORMICK: Does anybody think that's  
24 not an important point?

25 How about would you consider as the

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1 roadway opens up, and you're going to see pictures  
2 of the roadway and you're going to hear witnesses  
3 testify, that if you hear there were places, wide  
4 shoulders, where somebody could get off and stop,  
5 would you take that into account, that they weren't  
6 used, to show the defendant's state of mind?

7 What do you think?

8 PROSPECTIVE JUROR #10: Yes.

9 MS. MCCORMICK: Would you, sir?

10 PROSPECTIVE JUROR #11: Yes.

11 MS. MCCORMICK: How about if there's no  
12 evidence that the defendant tried to stop at all?  
13 Would you take that into your consideration of his  
14 state of mind?

15 You, sir?

16 PROSPECTIVE JUROR #14: Yes.

17 MS. MCCORMICK: How about if he appeared  
18 to completely ignore the warnings of other cars  
19 oncoming or any other kind of warnings and just kept  
20 driving straight? Is that something you would  
21 consider as an important fact in determining whether  
22 the defendant had a depraved state of mind?

23 PROSPECTIVE JUROR #3: Yes.

24 MS. MCCORMICK: Does anybody think that's  
25 not important, not relevant in this case?

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1           How about the idea-- just the general  
2           notion that you're going to have to determine what  
3           the state of mind of the defendant is from his  
4           actions? Once again, you know, we usually don't  
5           have the benefit of somebody announcing what they're  
6           thinking as they're doing something.

7           Would you say, Miss Griffin, in your  
8           everyday life that you look at what people do and  
9           from what they do you determine what they meant to  
10          do and when they intended to do? You do that on an  
11          everyday basis.

12                 PROSPECTIVE JUROR #2: No.

13                 THE COURT: Two minutes.

14                 MS. MCCORMICK: Thank you.

15                 Do you have children, ma'am?

16                 PROSPECTIVE JUROR #2: Yes.

17                 MS. MCCORMICK: So if your kids do  
18           something, they do one thing but they tell you  
19           something else, would you consider, along with what  
20           they said, what they did in determining what they  
21           actually meant to do? Would you do that?

22                 PROSPECTIVE JUROR #2: To determine what  
23           they did?

24                 MS. MCCORMICK: What they actually meant  
25           to do. They do one thing and they say something

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1 else. How are you going to decide what they meant  
2 to do?

3 PROSPECTIVE JUROR #2: I would have to  
4 think about it more. I would have to get more  
5 information on exactly what they did in order to  
6 determine whether or not to punish them for what  
7 they did.

8 MS. MCCORMICK: Would you all agree that  
9 taking into account what someone did and matching it  
10 to what they said and whether the two things match  
11 up is an important thing to consider?

12 This trial-- again, alcohol-- you heard  
13 the defense attorney talk about the fact that  
14 alcohol can dull perception and slow reaction time.  
15 Is there anybody here who has the idea about alcohol  
16 that it will make you blind? Do you think alcohol  
17 makes you blind or do you think it could affect how  
18 quickly you percept?

19 PROSPECTIVE JUROR #1: If you have enough  
20 alcohol, I'm sure it's quite difficult to see.

21 MS. MCCORMICK: Do you think if you had  
22 alcohol and it's difficult to see, you'd know it?

23 PROSPECTIVE JUROR #1: Yeah.

24 MS. MCCORMICK: Yes. Do you think that  
25 each person reacts differently to alcohol in their

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1 system? Does everybody agree that people are  
2 affected by alcohol differently?

3 Will you promise to listen to what effects  
4 of alcohol had on this defendant that night? Can  
5 you do that?

6 THE COURT: Time, Miss McCormick.

7 MS. MCCORMICK: Thank you, your Honor.

8 THE COURT: Mr. LaMagna, please.

9 MR. LAMAGNA: Good afternoon, ladies and  
10 gentlemen. Much of what we have been trying to  
11 articulate to the group you've heard over and over  
12 again. However, there's some things I'd like to  
13 just go over again.

14 Miss Rodriguez, Miss McCormick was saying,  
15 well, it's about the driving and it is about  
16 drinking and driving. You understand that the  
17 charge is murder. It's not just about drinking and  
18 driving. Otherwise, every DWI homicide would be a  
19 murder, wouldn't it? So we're not just talking  
20 about that.

21 And, Miss Cartegena, if the Court would  
22 give you lesser charges to consider after the  
23 evidence is in, wouldn't you consider those?

24 PROSPECTIVE JUROR #6: Yeah.

25 MR. LAMAGNA: Would anybody feel they're



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1 not going to consider them, that I'm only going to  
2 consider the murder charge?

3 Mr. Clark?

4 PROSPECTIVE JUROR #8: No.

5 MR. LAMAGNA: In fact, you would agree  
6 that there's degrees of culpability, that somebody  
7 may be charged with something, maybe they're not  
8 guilty of that, maybe they're guilty of something  
9 else?

10 Miss Bherwani?

11 PROSPECTIVE JUROR #3: Yes.

12 MR. LAMAGNA: Would you agree with that?

13 PROSPECTIVE JUROR #3: Yes.

14 MR. LAMAGNA: It's a matter of degree,  
15 isn't it?

16 PROSPECTIVE JUROR #3: Yes.

17 MR. LAMAGNA: There's an extreme degree  
18 and different degrees after that, correct?

19 PROSPECTIVE JUROR #3: Yes.

20 MR. LAMAGNA: And it's only going to be  
21 based on what the evidence is, Mr. Zucker, before  
22 you can feel comfortable making a decision with such  
23 gravity of a murder charge. Would you agree with  
24 that?

25 PROSPECTIVE JUROR #4: Yes.

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1 MR. LAMAGNA: Mr. Colantonio, you would  
2 agree it's the quality of the evidence. We know the  
3 end result here. It is a tragedy, and we all know  
4 that. What I need to ask you, and all of you, is  
5 tragedies unfortunately in life happen. The issue  
6 is going to be what, if anything, is the culpability  
7 of somebody who caused that tragedy. Would you  
8 agree?

9 PROSPECTIVE JUROR #9: (Indicating.)

10 MR. LAMAGNA: Are you open-minded enough  
11 to say I'm going to wait for the evidence before I  
12 decide what I think, correct?

13 PROSPECTIVE JUROR #9: Yes.

14 MR. LAMAGNA: Mr. Cavaco?

15 PROSPECTIVE JUROR #10: Cavaco.

16 MR. LAMAGNA: Would you agree with that,  
17 that that's reasonable?

18 PROSPECTIVE JUROR #10: Yes.

19 MR. LAMAGNA: Now, Miss Goldkranz, we were  
20 talking about youth. Well, youth, you would agree,  
21 would be a consideration to determine was this just  
22 a foolish, terrible, irresponsible act by a young  
23 man or a depraved mind. That would be a question  
24 that you would want to ask yourself, wouldn't it?  
25 It would be reasonable.

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1 PROSPECTIVE JUROR #13: Sure.

2 MR. LAMAGNA: Mr. Nielsen, would that be  
3 something that you would want to make a decision on  
4 after the evidence is in, was what happened here a  
5 terrible, foolish act, an irresponsible act, that  
6 may have criminal liability, but I still don't know  
7 necessarily if it was a depraved mind that did this.  
8 Would that be reasonable?

9 PROSPECTIVE JUROR #12: I'm not quite  
10 clear on your question.

11 MR. LAMAGNA: Would you consider all the  
12 factors of a person's age, that there may have been  
13 other reasons that are reasonable as to why this  
14 happened other than having a depraved mind, an evil  
15 mind?

16 PROSPECTIVE JUROR #12: I would consider a  
17 lot of things.

18 MR. LAMAGNA: Would we all agree to  
19 consider them, Mr. Kim?

20 PROSPECTIVE JUROR #11: Yes.

21 MR. LAMAGNA: Now, Mr. Kim, if ten people  
22 were with Mr. Heidgen before that the whole day and  
23 that night and articulated he was in a perfect mood,  
24 he was as happy and as excited as everybody else, he  
25 was having a great time, he was laughing, he was

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1 singing, he was dancing, wouldn't that be something  
2 that you would consider of whether or not all of a  
3 sudden he turned into a depraved person--

4 PROSPECTIVE JUROR #11: Yes.

5 MR. LAMAGNA: --to determine his state of  
6 mind? Wouldn't that be relevant?

7 PROSPECTIVE JUROR #11: Yes.

8 MR. LAMAGNA: Mr. Zucker, would you  
9 consider what everybody else who was with him said  
10 and their perception of what this person-- how he  
11 was acting and what his demeanor was?

12 PROSPECTIVE JUROR #4: I think that would  
13 have to be considered, yes.

14 MR. LAMAGNA: Miss Rodriguez, you heard  
15 what Mr. Zucker said. Wouldn't that have to be  
16 considered in determining what a person's state of  
17 mind is?

18 PROSPECTIVE JUROR #1: Yes.

19 MR. LAMAGNA: Miss Cartegena, did you ever  
20 go out with a whole group of people sitting in a  
21 restaurant, a bunch of people, and if somebody is  
22 sitting there, they're not talking, they're looking  
23 down at their plate, they're not laughing, they're  
24 not engaging with anybody, you would say what's  
25 wrong, right? Because you would perceive, because

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1 of all of your life experiences would tell,  
2 something is wrong, right?

3 Mr. Augustine, let's say you're at that  
4 same dinner party and the person you were talking  
5 about is engaging people, is talking, is happy, is  
6 telling jokes, everything is fine. That, as  
7 Mr. Zucker said, would be a reasonable thing to take  
8 into consideration if you were to decide what a  
9 person's state of mind is, how he was acting, what  
10 he was doing?

11 PROSPECTIVE JUROR #7: I guess so.

12 MR. LAMAGNA: Well, does anybody feel that  
13 wouldn't be relevant?

14 Miss Bherwani?

15 PROSPECTIVE JUROR #3: I would think it's  
16 relevant.

17 MR. LAMAGNA: Anybody?

18 Mr. Cavaco?

19 PROSPECTIVE JUROR #10: It's relevant.

20 MR. LAMAGNA: Of course. This is how he  
21 was acting.

22 Now, Mr. Kim, we talked about the effects  
23 of alcohol, and I don't want to spend so much time  
24 on that because that's not all there is to this  
25 charge. We're talking about, on top of which, a

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1           depraved mind. But you would agree that in  
2           determining whether or not this was a horrific,  
3           unintentional act without a depraved mind, you would  
4           determine how alcohol may have affected somebody,  
5           wouldn't you?

6                       PROSPECTIVE JUROR #11: Definitely.

7                       MR. LAMAGNA: As we know from life  
8           experiences, your perception gets changed. You  
9           don't react fast enough. Things that probably  
10          should have attracted your attention may not as  
11          fast.

12                      You agree with that, don't you?

13                      PROSPECTIVE JUROR #11: Um-hum.

14                      MR. LAMAGNA: Can we all agree with that,  
15          that those are things that happen?

16                      The issue in this case-- this is a murder  
17          case. We have to determine whether the district  
18          attorney has presented sufficient evidence, not only  
19          to show that this tragedy occurred and somebody is  
20          at fault and whether they were drinking or not, but  
21          that he was of a depraved mind.

22                      Miss Griffin, would you promise that you  
23          will listen to all of the evidence coming from that  
24          witness stand, and if they don't prove that aspect  
25          of their case, how would you vote? Not guilty,

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1 right?

2 PROSPECTIVE JUROR #2: Yes.

3 MR. LAMAGNA: Are we all in agreement with

4 that?

5 Mr. Cavaco?

6 PROSPECTIVE JUROR #10: Yes.

7 MR. LAMAGNA: If they don't prove to your

8 satisfaction beyond a reasonable doubt that this

9 young man was of a depraved mind, how do you vote?

10 PROSPECTIVE JUROR #10: Not guilty.

11 MR. LAMAGNA: Are we all in agreement with

12 that?

13 Mr. Augustine?

14 PROSPECTIVE JUROR #7: Yes.

15 MR. LAMAGNA: And if the judge were to

16 give you lesser charges to consider, would you?

17 PROSPECTIVE JUROR #7: Yes.

18 MR. LAMAGNA: Mr. Clark?

19 PROSPECTIVE JUROR #8: Yes.

20 MR. LAMAGNA: Mr. Nielsen, you would agree

21 that there's degrees of culpability. Would you not

22 agree?

23 PROSPECTIVE JUROR #12: I would agree.

24 MR. LAMAGNA: For example, if somebody

25 gets charged with stealing a coat from a store-- by

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1 no means am I trying to equate these examples to  
2 this case, I think we all understand that-- but if  
3 somebody steals a coat and he's charged with grand  
4 larceny because the law says it's over \$1,000, what  
5 you stole makes it a grand larceny, and it turns out  
6 the coat was only worth \$500 and it doesn't reach  
7 the level of grand larceny but it means it's a petit  
8 larceny, he's still guilty of something. He still  
9 stole, but would you agree then it's not grand  
10 larceny, it's the lesser petit larceny?

11 PROSPECTIVE JUROR #12: Yes.

12 MR. LAMAGNA: Miss Bherwani, would you  
13 agree with that, too? There are degrees of  
14 culpability?

15 PROSPECTIVE JUROR #3: Yes.

16 MR. LAMAGNA: Somebody may be charged with  
17 something and may not be guilty of that charge but  
18 guilty of something else?

19 PROSPECTIVE JUROR #3: Yes.

20 MR. LAMAGNA: Would you promise to  
21 consider that when you're-- after you hear all the  
22 evidence?

23 PROSPECTIVE JUROR #3: Yes.

24 MR. LAMAGNA: Miss Rodriguez, would you  
25 consider that?



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1 PROSPECTIVE JUROR #1: Yes.

2 MR. LAMAGNA: Miss Griffin, would you  
3 agree that just because you're charged with  
4 something doesn't necessarily mean you're guilty of  
5 that?

6 PROSPECTIVE JUROR #2: I agree.

7 MR. LAMAGNA: People can get overcharged,  
8 right?

9 PROSPECTIVE JUROR #2: Yes.

10 MR. LAMAGNA: They can be overcharged for  
11 other reasons, too. You know that, right?

12 PROSPECTIVE JUROR #2: Yes.

13 MR. LAMAGNA: There could be a bias,  
14 politics, a lot of things. You would agree with  
15 that?

16 PROSPECTIVE JUROR #2: Yes, I do.

17 MR. LAMAGNA: Mr. Zucker, you agree that's  
18 not fair, is it?

19 PROSPECTIVE JUROR #4: Correct.

20 MR. LAMAGNA: If a person is guilty of  
21 something, they should be guilty of what they did,  
22 not because it may be popular or politically  
23 expedient.

24 You agree with that, don't you?

25 PROSPECTIVE JUROR #4: Yes.

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1 MR. LAMAGNA: Especially when a person's  
2 life is at stake.

3 PROSPECTIVE JUROR #4: Yes.

4 MR. LAMAGNA: How about you, Miss  
5 Cartegena. Would you agree with that?

6 PROSPECTIVE JUROR #6: I do.

7 MR. LAMAGNA: Mr. Dacosta, I almost forgot  
8 you back there. Do you agree with that?

9 PROSPECTIVE JUROR #14: Yes.

10 MR. LAMAGNA: That fairness and justice--  
11 somebody should be held accountable for what it is  
12 that they did, nothing more, especially when it  
13 comes to a murder charge. Would

14 You agree with that?

15 PROSPECTIVE JUROR #14: Right.

16 MR. LAMAGNA: Miss Goldkranz, would you  
17 agree that it would be wrong to overly convict  
18 somebody of such a serious charge for reasons other  
19 than the evidence?

20 PROSPECTIVE JUROR #13: Yes.

21 MR. LAMAGNA: That no matter how terrible  
22 this result was, Mr. Kim, your job is to determine  
23 the facts, not to give a verdict that is popular or  
24 unpopular.

25 You agree with that, right?

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1 PROSPECTIVE JUROR #11: That's correct.

2 MR. LAMAGNA: It's about his life, right?

3 PROSPECTIVE JUROR #11: That's correct.

4 MR. LAMAGNA: Mr. Cavaco, you would agree  
5 with that, too, wouldn't you?

6 PROSPECTIVE JUROR #10: Yes.

7 MR. LAMAGNA: It's not about what's  
8 popular or unpopular, what is politically expedient  
9 or what other people may want, even the victims.  
10 It's not about that either, is it?

11 PROSPECTIVE JUROR #10: No.

12 MR. LAMAGNA: It's not about meeding out  
13 vengeance, is it?

14 PROSPECTIVE JUROR #10: No.

15 MR. LAMAGNA: Do we all agree,  
16 Mr. Colantonio, this isn't about vengeance, this is  
17 about justice. If somebody is guilty of something,  
18 they should be found guilty of what it is they're  
19 guilty of. Isn't that what makes our country better  
20 than others, our justice system?

21 PROSPECTIVE JUROR #9: Um-hum.

22 MR. LAMAGNA: Okay? It's fairness.

23 That's why we have a jury here.

24 Miss Griffin, just because the government  
25 may say we're charging somebody with murder, that

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1 doesn't mean it's necessarily so, correct? Just  
2 because they're charging a charge of murder doesn't  
3 mean it's necessarily so.

4 PROSPECTIVE JUROR #2: If it is, they have  
5 to prove it.

6 MR. LAMAGNA: Exactly. You haven't heard  
7 any evidence, correct?

8 PROSPECTIVE JUROR #2: Right.

9 THE COURT: Two minutes, Mr. LaMagna.

10 MR. LAMAGNA: Thank you, your Honor.

11 Now, you're going to hear a lot of  
12 evidence. You're going to have to determine the  
13 credibility of the witnesses who testify, and if a  
14 witness changes his testimony to fit a particular  
15 theory, that would be wrong, wouldn't it; Miss  
16 Cartegena?

17 PROSPECTIVE JUROR #6: (Indicating.)

18 MR. LAMAGNA: Mr. Dacosta?

19 PROSPECTIVE JUROR #14: Right.

20 MR. LAMAGNA: Miss Goldkranz?

21 PROSPECTIVE JUROR #13: Um-hum.

22 MR. LAMAGNA: If evidence is changed just  
23 to make my employer happy, I'll get more business at  
24 the expense of somebody's life. That would be  
25 wrong, wouldn't it, Mr. Colantonio?

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1 PROSPECTIVE JUROR #9: Yes.

2 MR. LAMAGNA: Mr. Cavaco?

3 PROSPECTIVE JUROR #10: Yes.

4 MR. LAMAGNA: Would you promise when you  
5 listen to these witnesses you'll look at them  
6 critically? If there are mistakes, ask yourself  
7 why. If there are excuses, excuses aren't evidence.

8 You don't fill in the blanks here, right,  
9 Mr. Pike?

10 PROSPECTIVE JUROR #5: Yeah.

11 MR. LAMAGNA: It's the evidence. If the  
12 evidence is not there, you're not going to fill it  
13 in, right?

14 PROSPECTIVE JUROR #5: Correct.

15 MR. LAMAGNA: And if a person is not  
16 guilty of what the charge is, despite a terrible  
17 tragedy, you would agree that they may be guilty of  
18 something else. Would you agree?

19 PROSPECTIVE JUROR #7: Yes.

20 MR. LAMAGNA: If that's the case, you  
21 would find Marty not guilty of that charge, wouldn't  
22 you?

23 PROSPECTIVE JUROR #7: (Indicating.)

24 MR. LAMAGNA: You would consider the  
25 lesser charges?

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1 PROSPECTIVE JUROR #7: Yes.

2 MR. LAMAGNA: Would we all agree with  
3 that?

4 Miss Goldkranz?

5 PROSPECTIVE JUROR #13: Yes.

6 MR. LAMAGNA: That would be the right  
7 thing to do.

8 THE COURT: That's time, Mr. LaMagna.

9 MR. LAMAGNA: Thank you.

10 THE COURT: Ladies and gentlemen, I'm  
11 going to give you all about a five-minute break.  
12 I'm going to ask you all to leave the courtroom for  
13 that five minutes.

14 Please don't talk about the case.

15 (Whereupon, the jury panel exited the  
16 courtroom.)

17 (Whereupon, a brief recess was taken.)

18 THE COURT: Counsel?

19 THE CLERK: People, challenges for cause  
20 as to seats one through eight at this time?

21 MS. MCCORMICK: None nor cause.

22 THE CLERK: Defense, seats one through  
23 eight for cause?

24 MR. LAMAGNA: Nothing, your Honor.

25 THE CLERK: People, peremptory challenges,

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1 seats one through eight?

2 MS. MCCORMICK: Number three, your Honor,  
3 and also number seven.

4 THE CLERK: Bherwani and Augustine?

5 MS. MCCORMICK: Yes.

6 MR. LAMAGNA: One through eight?

7 Two and six, Griffin and Cartegena.

8 THE CLERK: That leaves us with seat  
9 number one becomes juror number five, which is  
10 Rodriguez. Seat number four becomes juror number  
11 six, which is Zucker. Seat number five becomes  
12 juror number seven, which is Pike. Seat number  
13 eight becomes juror number eight, which is Clark.

14 We'll address seats nine through twelve at  
15 this time.

16 People, for cause, nine through twelve?

17 MS. MCCORMICK: No one for cause, your  
18 Honor.

19 THE CLERK: Defense?

20 MR. LAMAGNA: No, your Honor.

21 THE CLERK: People, peremptory challenges,  
22 nine through twelve at this time?

23 MS. MCCORMICK: Number twelve.

24 THE CLERK: Nielsen?

25 MS. MCCORMICK: Yes.

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1 THE CLERK: Defense, peremptory  
2 challenges, nine through twelve at this time?

3 MR. LAMAGNA: No, your Honor.

4 THE CLERK: Seat number nine becomes juror  
5 number nine, which is Colantonio. Seat number ten  
6 becomes juror number ten, which is Cavaco. Seat  
7 number eleven, becomes juror number eleven, which is  
8 Kim.

9 And seat number thirteen, People, for  
10 cause?

11 MS. MCCORMICK: No.

12 THE CLERK: Defense, for cause, seat  
13 number thirteen?

14 MR. LAMAGNA: No.

15 THE CLERK: People, peremptory challenge,  
16 seat number thirteen?

17 MS. MCCORMICK: No.

18 THE CLERK: Defense, peremptory challenge,  
19 seat number thirteen?

20 MR. LAMAGNA: Yes, your Honor, which is  
21 Goldkranz.

22 THE CLERK: People, for cause, this is  
23 seat number fourteen?

24 MS. MCCORMICK: None for cause.

25 THE CLERK: Defense, for cause, seat



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1 number fourteen?

2 MR. LAMAGNA: No, your Honor.

3 THE CLERK: People, peremptory, seat

4 number fourteen?

5 MS. MCCORMICK: Give me one minute.

6 I'm going to challenge number fourteen.

7 THE CLERK: We have seven jurors out of  
8 that round, your Honor.

9 THE COURT: Please produce the jury.

10 (Whereupon, a brief recess was taken.)

11 (Whereupon, the jury panel entered the  
12 courtroom.)

13 THE COURT: Welcome back, ladies and  
14 gentlemen.

15 MR. LAMAGNA: Jean, take over, please.

16 THE CLERK: The following jurors remain  
17 seated, please:

18 Diana Rodriguez, Russell Zucker, Robert  
19 Pike, Patrick Clark, Michael Colantonio, Craig  
20 Cavaco and Kenneth Kim remain seated.

21 The other jurors in the box, please step  
22 out. You're excused with the thanks of the Court.  
23 Follow the directions of the court officers.

24 (Whereupon, the unselected jurors were  
25 excused.)

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1 (Whereupon, the jurors were duly sworn.)

2 THE COURT: Ladies and gentlemen, I now  
3 have a much more optimistic feeling that Monday  
4 morning at 9:30 we'll be able to get to opening  
5 statements and take testimony. I was starting to  
6 despair a little bit. No longer.

7 Except for present juror number one, make  
8 sure you bring in a good book. Juror number one has  
9 a good book.

10 You all know the admonitions I gave to you  
11 before lunch. Please observe them.

12 Have a nice weekend. See you Monday  
13 morning.

14 (Whereupon, the jurors exited the  
15 courtroom.)

16 THE COURT: As for the rest of you, ladies  
17 and gentlemen, please don't panic. We're going to  
18 fill the box, and that's all. We'll get fourteen of  
19 you to go through questioning, and that will give  
20 the lawyers an opportunity to review the  
21 questionnaires overnight, which will be a refreshing  
22 change for them. We are going to fill the box at  
23 this time.

24 THE CLERK: Please have your  
25 questionnaires out.

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1                   Seat number one, Phyllis Cheng, C-H-E-N-G;  
2                   seat number two, Robert Tingwall, T-I-N-G-W-A-L-L;  
3                   seat number three, Joseph Larson, L-A-R-S-O-N; seat  
4                   number four, Michael Derita, D-E-R-I-T-A; seat  
5                   number five, Susan Gledhill, G-L-E-D-H-I-L-L; seat  
6                   number six, Tom Cassidy.

7                   (No response.)

8                   Seat number six, Stacey Baez, B-A-E-Z;  
9                   seat number seven, William Hopkins, H-O-P-K-I-N-S.

10                  PROSPECTIVE JUROR #7: I know one of the  
11                  names on the witness list.

12                  THE COURT: Go back to central jury.

13                  THE CLERK: Seat number seven, Charmen  
14                  Brown, B-R-O-W-N; seat number eight, Peter Frosos,  
15                  F-R-O-S-O-S; seat number nine, James Cosgrove.

16                  (No response.)

17                  Seat number nine, Susan Kaul, K-A-U-L;  
18                  seat number ten, Joseph Sheridan, S-H-E-R-I-D-A-N;  
19                  seat number eleven, Jill Tung, T-U-N-G; seat number  
20                  twelve, Christina Rivas, R-I-V-A-S; seat number  
21                  thirteen, Meryl Shields, S-H-I-E-L-D-S; seat number  
22                  fourteen, Shannon Yearwood, Y-E-A-R-W-O-O-D.

23                  THE COURT: Welcome, ladies and gentlemen.

24                  Let's see if we have a full box.

25                  Do any of you know any of us?

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1 (No response.)

2 Did anybody know any of the names on the  
3 witness list?

4 Sir?

5 PROSPECTIVE JUROR #10: I have a cousin  
6 with a similar name.

7 THE COURT: Would you tell us what your  
8 cousin's name is?

9 PROSPECTIVE JUROR #10: Chris Sweeney.

10 THE COURT: Is he an investigator with the  
11 police department?

12 PROSPECTIVE JUROR #10: No, sir.

13 THE COURT: Is that who that is,  
14 Investigator Sweeney?

15 He's with the state police, sir. He's not  
16 your cousin?

17 PROSPECTIVE JUROR #10: No.

18 THE COURT: Third, and probably most  
19 important, many of you, if not all of you, know  
20 something about this case from reports you may have  
21 heard on TV, the radio, the newspaper, perhaps. Are  
22 any of you in that category?

23 Does anybody feel that because you might  
24 have heard something about this case since its  
25 inception, instead of only learning about this case

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1 in the courtroom, that you may have come to some  
2 conclusion which renders you incapable of being  
3 fair? Does anybody feel that way?

4 (No response.)

5 In that case, everybody, we're keeping to  
6 the timetable I've given you. I'm giving you a  
7 responsibility one another. Please be present at  
8 9:30. If you are, I promise you we will be-- I  
9 promise you if we get things going in a timely  
10 manner in the morning, we'll be able to start  
11 opening statements and the calling of witnesses  
12 Monday.

13 Everybody, have a nice night. See you all  
14 tomorrow morning at 9:30.

15 (Whereupon, the jury panel exited the  
16 courtroom.)

17 (Whereupon, a brief recess was taken.)

18 THE COURT: Sworn juror Rodriguez, juror  
19 number five, I thought I was clear when I said that  
20 the case was going to last upwards of five weeks and  
21 anybody who wanted to leave could leave. She forgot  
22 that she was a full-time student and she's going to  
23 lose the whole semester. She's on this jury. I  
24 don't know why she stayed, but she did.

25 Do we have consent to release her as a

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1 sworn juror?

2 MR. HAYDEN: Yes, your Honor.

3 MR. LAMAGNA: Yes, your Honor.

4 THE COURT: We're now down to ten sworn  
5 jurors. We'll deal with it tomorrow. We're going  
6 to move everybody up one.

7 (Whereupon, the Court stood in recess for  
8 the day.)

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People v. Heidgen

1 SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU : CRIMINAL PART 31

2 -----x  
3 THE PEOPLE OF THE STATE OF NEW YORK

4 -against-

Indictment No.  
1910N-2005

5  
6 MARTIN ROBERT HEIDGEN,

7 Defendant.

8 -----x

Mineola, New York  
September 8, 2006

9  
10 B E F O R E: HON. ALAN L. HONOROF  
11 Acting Supreme Court Justice

12  
13 A P P E A R A N C E S:

14 (Same as previously noted.)

15  
16 \* \* \* \*

17  
18 (Whereupon, the prospective jury panel  
19 entered the courtroom.)

20 THE CLERK: Case on trial, indictment  
21 1910N-2005, People v. Martin Heidgen.

22 People ready?

23 MR. HAYDEN: The People are ready, your  
24 Honor.

25 THE CLERK: Defendant ready?

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1 MR. LAMAGNA: Defendant ready, your Honor.

2 THE CLERK: The defendant is present, your  
3 Honor.

4 THE COURT: All right. Would you fill the  
5 box, please?

6 THE CLERK: Seat number one-- please have  
7 your questionnaires out-- James Cosgrove,  
8 C-O-S-G-R-O-V-E.

9 (No response.)

10 Seat number one, Michelle Vargas,  
11 V-A-R-G-A-S.

12 THE COURT: Miss Vargas, before you go  
13 down there, do you know any of us?

14 PROSPECTIVE JUROR #1: No.

15 THE COURT: Do you know anybody on that  
16 witness list?

17 PROSPECTIVE JUROR #1: No.

18 THE COURT: Have a seat.

19 Mr. Hayden?

20 MR. HAYDEN: May I proceed?

21 THE COURT: Please.

22 MR. HAYDEN: Good morning, ladies and  
23 gentlemen. Good morning.

24 You heard a lot of talk about evil, as  
25 defense counsel was speaking yesterday, evil, evil



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1 man. Was he an evil man? Was he a murderer?

2 Would each of you accept that you can't  
3 accept anything defense counsel told you about a  
4 depraved mind? That's for the judge to tell you.  
5 Can all of you accept that?

6 You disregard anything defense counsel  
7 told you about evil and depravity. It's all going  
8 to be coming from Judge Honorof. Would each of you  
9 accept that?

10 Can each of you assure us you'll listen  
11 very carefully when Judge Honorof explains depraved  
12 indifference to human life, which is what we're  
13 talking about here? You can all do that?

14 If Judge Honorof charges you that we're  
15 talking about depraved indifference to human life at  
16 the time of the crash to cause these gruesome  
17 injuries and death, will you accept that?

18 When you're trying to determine whether  
19 the defendant showed a feeling of depraved  
20 indifference to human life, will you consider what  
21 it was he was doing out on the Meadowbrook Parkway  
22 that night? Will all of you do that? Will you all  
23 consider it?

24 Will you consider whether what he was  
25 doing made gruesome brutal injuries and death

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1 inevitable? Will you consider that?

2 And will you consider whether or not that  
3 establishes that at the time of the crash he was  
4 feeling a depraved indifference to human life? Can  
5 all of you do that?

6 Miss Vargas, is there anything you've  
7 heard so far that gives you concern about your  
8 ability to be fair and impartial?

9 PROSPECTIVE JUROR #1: No.

10 MR. HAYDEN: Will you concentrate, during  
11 the course of this trial, on observations of the  
12 defendant before the crash?

13 PROSPECTIVE JUROR #1: Yes.

14 MR. HAYDEN: Will you concentrate on  
15 whether he was aware of his surroundings that night?

16 PROSPECTIVE JUROR #1: Yes.

17 MR. HAYDEN: Will you concentrate on  
18 whether he knew what was going on around him?

19 PROSPECTIVE JUROR #1: Yes.

20 MR. HAYDEN: Will you concentrate on  
21 whether he was equally aware, in spite of  
22 intoxication, of his surroundings as he drove the  
23 way he did along the parkway?

24 PROSPECTIVE JUROR #1: Yes.

25 MR. HAYDEN: And will you consider whether

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1 or not that establishes that at the time of the  
2 crash he was feeling a depraved indifference to  
3 human life?

4 PROSPECTIVE JUROR #1: Yes.

5 MR. HAYDEN: Can you do that?

6 PROSPECTIVE JUROR #1: Yes.

7 MR. HAYDEN: Mr. Tingwall?

8 PROSPECTIVE JUROR #2: Yes.

9 MR. HAYDEN: Is that correctly pronounced?

10 PROSPECTIVE JUROR #2: That's correct.

11 MR. HAYDEN: Mr. Tingwall, do you have any  
12 grandchildren?

13 PROSPECTIVE JUROR #2: I have one.

14 MR. HAYDEN: Boy or girl?

15 PROSPECTIVE JUROR #2: Girl.

16 MR. HAYDEN: You mentioned on your  
17 questionnaire that you know someone in law  
18 enforcement?

19 PROSPECTIVE JUROR #2: Yes.

20 MR. HAYDEN: Who is that?

21 PROSPECTIVE JUROR #2: That's me. I was  
22 formerly a detective school supervisor in midtown  
23 south precinct in Manhattan.

24 MR. HAYDEN: Is there anything about your  
25 experiences as an officer that would prevent you--

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1 PROSPECTIVE JUROR #2: No, I don't think  
2 so. It wouldn't.

3 MR. HAYDEN: --from being fair and  
4 impartial to both sides?

5 PROSPECTIVE JUROR #2: I've always been  
6 fair and impartial.

7 MR. HAYDEN: You indicated, sir, you've  
8 been the victim of a crime. Tell us a bit about  
9 that.

10 PROSPECTIVE JUROR #2: I had a burglary  
11 many years ago in my house. My daughter, my  
12 youngest daughter, had a cell phone and purse  
13 stolen.

14 MR. HAYDEN: Is there anything about that  
15 experience that would prevent you from being fair  
16 and impartial?

17 PROSPECTIVE JUROR #2: No. I don't see  
18 why it would.

19 MR. HAYDEN: You testified in a courtroom?

20 PROSPECTIVE JUROR #2: Yes, I have  
21 testified.

22 MR. HAYDEN: As an officer?

23 PROSPECTIVE JUROR #2: Yes.

24 MR. HAYDEN: Anything about those  
25 experiences that would affect you here?

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1 PROSPECTIVE JUROR #2: Not that I can  
2 think of, no.

3 MR. HAYDEN: Mr. Larson?

4 PROSPECTIVE JUROR #3: Yes.

5 MR. HAYDEN: You indicated, sir, you, too,  
6 have testified in court?

7 PROSPECTIVE JUROR #3: Yes.

8 MR. HAYDEN: Tell us a bit about that  
9 experience.

10 PROSPECTIVE JUROR #3: It was an accident  
11 between a police car and, you know, a regular car,  
12 and I just, you know, was a witness.

13 MR. HAYDEN: That was a civil trial?

14 PROSPECTIVE JUROR #3: Yes.

15 MR. HAYDEN: Anything about that  
16 experience that would affect your ability to be fair  
17 and impartial?

18 PROSPECTIVE JUROR #3: No.

19 MR. HAYDEN: Also you indicated you were  
20 involved in a lawsuit?

21 PROSPECTIVE JUROR #3: Oh, my daughter  
22 fell a long time ago in a school district and broke  
23 her arm.

24 MR. HAYDEN: Nothing about that that would  
25 affect you here?

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1 PROSPECTIVE JUROR #3: No.

2 MR. HAYDEN: You know someone in law  
3 enforcement?

4 PROSPECTIVE JUROR #3: Yeah, a lot of  
5 police officers in Williston Park.

6 MR. HAYDEN: You could still treat a  
7 police officer as a witness the same way you treat  
8 anyone else?

9 PROSPECTIVE JUROR #3: Yeah.

10 MR. HAYDEN: You also served on a civil  
11 jury?

12 PROSPECTIVE JUROR #3: Yeah.

13 MR. HAYDEN: What type of case?

14 PROSPECTIVE JUROR #3: It was an accident,  
15 where someone fell down a flight of stairs and hurt  
16 their knee.

17 MR. HAYDEN: There was a verdict?

18 PROSPECTIVE JUROR #3: They settled about  
19 20 minutes after the trial started.

20 MR. HAYDEN: Anything about that  
21 experience that would affect you here?

22 PROSPECTIVE JUROR #3: No.

23 MR. HAYDEN: Mr. Derita?

24 PROSPECTIVE JUROR #4: Yes.

25 MR. HAYDEN: You, too, know someone in law

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1 enforcement, sir?

2 PROSPECTIVE JUROR #4: No, I don't.

3 MR. HAYDEN: You served on a civil jury?

4 PROSPECTIVE JUROR #4: Yes, I did.

5 MR. HAYDEN: Anything about that

6 experience that would affect you here?

7 PROSPECTIVE JUROR #4: No.

8 MR. HAYDEN: Did it go to verdict?

9 PROSPECTIVE JUROR #4: Yes, it did.

10 MR. HAYDEN: Do you feel you could be fair

11 and impartial to both sides?

12 PROSPECTIVE JUROR #4: I sure can.

13 MR. HAYDEN: You'll concentrate on what

14 the defendant did on the Meadowbrook Parkway in

15 determining whether he was feeling a depraved

16 indifference to human life at the time of that

17 collision?

18 PROSPECTIVE JUROR #4: I can be fair.

19 MR. HAYDEN: Miss Gledhill?

20 PROSPECTIVE JUROR #5: Um-hum.

21 MR. HAYDEN: You mentioned, ma'am, you

22 were involved in a lawsuit?

23 PROSPECTIVE JUROR #5: I wasn't, a friend

24 of mine had-- his wife passed away. It was a

25 malpractice lawsuit.

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1 MR. HAYDEN: Thinking about that  
2 experience, would that affect you here?

3 PROSPECTIVE JUROR #5: No, I don't see  
4 why.

5 MR. HAYDEN: You can be fair and impartial  
6 to both sides?

7 PROSPECTIVE JUROR #5: Certainly.

8 MR. HAYDEN: You can be fair to the  
9 defendant and to the prosecution?

10 PROSPECTIVE JUROR #5: Sure.

11 MR. HAYDEN: And you're going to consider  
12 everything in trying to get into the defendant's  
13 head and determine his state of mind at the time of  
14 the collision?

15 PROSPECTIVE JUROR #5: I'll try, sure.

16 MR. HAYDEN: To see whether he was feeling  
17 depraved indifference to human life?

18 PROSPECTIVE JUROR #5: Of course.

19 MR. HAYDEN: Of course you're going to  
20 concentrate hard on what it was he was doing out on  
21 the parkway?

22 PROSPECTIVE JUROR #5: Right.

23 MR. HAYDEN: Miss Baez?

24 PROSPECTIVE JUROR #6: Yes.

25 MR. HAYDEN: Miss Baez, you indicated you



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1 were the victim of a crime?

2 PROSPECTIVE JUROR #6: No. My sister's  
3 house was robbed in California four years ago.

4 MR. HAYDEN: Anything about that  
5 experience that would affect you here?

6 PROSPECTIVE JUROR #6: No. I wasn't even  
7 there. It's just something that--

8 MR. HAYDEN: Sure.

9 PROSPECTIVE JUROR #6: --she told me.

10 MR. HAYDEN: You know someone in law  
11 enforcement?

12 PROSPECTIVE JUROR #6: My dad retired in  
13 '78.

14 MR. HAYDEN: Where did he work?

15 PROSPECTIVE JUROR #6: In the city.

16 MR. HAYDEN: He was a police officer?

17 PROSPECTIVE JUROR #6: Yes.

18 MR. HAYDEN: Did he discuss his work with  
19 you?

20 PROSPECTIVE JUROR #6: Not really. I was  
21 young, no.

22 MR. HAYDEN: Okay. You can assure us  
23 you'll treat police witnesses just like anyone else?

24 PROSPECTIVE JUROR #6: Yes.

25 MR. HAYDEN: You'll give them no more

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1 credibility than another witness?

2 PROSPECTIVE JUROR #6: No.

3 MR. HAYDEN: And no less credibility?

4 PROSPECTIVE JUROR #6: No.

5 MR. HAYDEN: You, too, will consider what

6 the defendant was doing out on the Meadowbrook

7 Parkway at around two o'clock on Saturday morning in

8 determining whether at the time he was feeling a

9 depraved indifference to human life?

10 PROSPECTIVE JUROR #6: Yes.

11 MR. HAYDEN: Miss Brown?

12 PROSPECTIVE JUROR #7: Yes.

13 MR. HAYDEN: Miss Brown, you indicated you

14 served on a jury in 2002?

15 PROSPECTIVE JUROR #7: Yes.

16 MR. HAYDEN: What type of jury was that?

17 PROSPECTIVE JUROR #7: Civil.

18 MR. HAYDEN: No verdict?

19 PROSPECTIVE JUROR #7: No verdict.

20 MR. HAYDEN: Anything about that

21 experience that would affect you here?

22 PROSPECTIVE JUROR #7: No.

23 MR. HAYDEN: What type of case was it?

24 PROSPECTIVE JUROR #7: I didn't hear

25 anything about the case.

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1 MR. HAYDEN: Anything you've heard so far  
2 make you feel you wouldn't be fair and impartial to  
3 both sides?

4 PROSPECTIVE JUROR #7: No.

5 MR. HAYDEN: You're going to consider all  
6 of the facts in trying to determine whether he was  
7 feeling a depraved indifference to human life at the  
8 time of the crash that caused those gruesome  
9 injuries and death?

10 PROSPECTIVE JUROR #7: Yes.

11 MR. HAYDEN: Mr. Frosos-- correctly  
12 pronounced, sir?

13 PROSPECTIVE JUROR #8: Yes.

14 MR. HAYDEN: You know someone in law  
15 enforcement?

16 PROSPECTIVE JUROR #8: I have a nephew who  
17 works in New York City.

18 MR. HAYDEN: As a police officer?

19 PROSPECTIVE JUROR #8: Yes.

20 MR. HAYDEN: Do you discuss your work with  
21 him?

22 PROSPECTIVE JUROR #8: No.

23 MR. HAYDEN: You served on a criminal  
24 jury?

25 PROSPECTIVE JUROR #8: Um-hum.

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1 MR. HAYDEN: What type of case was that?

2 PROSPECTIVE JUROR #8: A fight in  
3 Eisenhower Park. It was a stabbing but no weapon  
4 was found.

5 MR. HAYDEN: Did it go to verdict?

6 PROSPECTIVE JUROR #8: Yeah.

7 MR. HAYDEN: You indicated you were  
8 involved in a lawsuit?

9 PROSPECTIVE JUROR #8: Out of state. It  
10 was in reference to an injury.

11 MR. HAYDEN: You can be fair and impartial  
12 to both sides?

13 PROSPECTIVE JUROR #8: Yes.

14 MR. HAYDEN: You can look at all the  
15 evidence, the facts and circumstances, in  
16 determining whether the defendant was feeling  
17 depraved indifference to human life at the time of  
18 this crash?

19 PROSPECTIVE JUROR #8: Yes.

20 MR. HAYDEN: Miss Kaul, you indicated on  
21 your questionnaire you know someone who has been the  
22 victim of a crime?

23 PROSPECTIVE JUROR #9: Yes, a friend. He  
24 was driving a car.

25 MR. HAYDEN: Driving?

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1 PROSPECTIVE JUROR #9: A friend of mine,  
2 he was drunk and driving and he hit a boy and  
3 someone sitting next to him died.

4 MR. HAYDEN: Did you discuss the matter  
5 with him?

6 PROSPECTIVE JUROR #9: No.

7 MR. HAYDEN: Did his case go to trial?

8 PROSPECTIVE JUROR #9: Yes.

9 MR. HAYDEN: Were you involved in the  
10 trial in any way?

11 PROSPECTIVE JUROR #9: No.

12 MR. HAYDEN: Anything about that  
13 experience that would affect you here?

14 PROSPECTIVE JUROR #9: No.

15 MR. HAYDEN: You can be fair and impartial  
16 to both sides?

17 PROSPECTIVE JUROR #9: Yes.

18 MR. HAYDEN: Mr. Sheridan?

19 PROSPECTIVE JUROR #10: Yes, sir.

20 MR. HAYDEN: You served on a criminal  
21 case?

22 PROSPECTIVE JUROR #10: Yes, sir.

23 MR. HAYDEN: Did it go to verdict?

24 PROSPECTIVE JUROR #10: Yes, sir.

25 MR. HAYDEN: What type of crime?

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1 PROSPECTIVE JUROR #10: It was a rape,  
2 first degree assault, and he was convicted.

3 MR. HAYDEN: Anything about that  
4 experience that would affect you here?

5 PROSPECTIVE JUROR #10: No, sir.

6 MR. HAYDEN: You indicated that you know  
7 someone accused of a crime?

8 PROSPECTIVE JUROR #10: Yes, sir.

9 MR. HAYDEN: Would you tell us a bit about  
10 that?

11 PROSPECTIVE JUROR #10: I was arrested for  
12 possession of drugs and the case was dismissed.

13 MR. HAYDEN: How do you feel you were  
14 treated?

15 PROSPECTIVE JUROR #10: Okay.

16 MR. HAYDEN: You were treated well by the  
17 police?

18 PROSPECTIVE JUROR #10: Yes. It was  
19 difficult.

20 MR. HAYDEN: Sure. Anything about that  
21 experience that would affect you here?

22 PROSPECTIVE JUROR #10: No, sir.

23 MR. HAYDEN: You can be fair and impartial  
24 to both sides?

25 PROSPECTIVE JUROR #10: Yes, sir.

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1 MR. HAYDEN: You, too, will consider all  
2 of the facts and circumstances which you're going to  
3 hear from the witness stand, how he was driving and  
4 what he was doing in determining whether he was  
5 feeling a depraved indifference to human life when  
6 he caused this crash?

7 PROSPECTIVE JUROR #10: Yes, sir.

8 MR. HAYDEN: Miss Tung?

9 PROSPECTIVE JUROR #11: Yes.

10 MR. HAYDEN: Is that correctly pronounced,  
11 ma'am?

12 PROSPECTIVE JUROR #11: Yes.

13 MR. HAYDEN: You mentioned, ma'am, you  
14 know someone in law enforcement?

15 PROSPECTIVE JUROR #11: My father is a  
16 retired bridge and tunnel officer.

17 MR. HAYDEN: Did you discuss his work with  
18 him?

19 PROSPECTIVE JUROR #11: No.

20 MR. HAYDEN: You can treat a police  
21 officer like any other witness?

22 PROSPECTIVE JUROR #11: Yes.

23 MR. HAYDEN: You can be fair and impartial  
24 to both sides?

25 PROSPECTIVE JUROR #11: Yes.

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1 MR. HAYDEN: Miss Rivas, you indicated on  
2 your questionnaire that you know someone accused and  
3 convicted of a crime?

4 PROSPECTIVE JUROR #12: Yes.

5 MR. HAYDEN: Tell us a bit about that,  
6 please.

7 PROSPECTIVE JUROR #12: It was a friend of  
8 mine. She was actually accused of two crimes. One  
9 was stealing from her former employer, one was  
10 driving while intoxicated.

11 MR. HAYDEN: Did you discuss those matters  
12 with her?

13 PROSPECTIVE JUROR #12: Um-hum.

14 MR. HAYDEN: Does she feel she was treated  
15 fairly?

16 PROSPECTIVE JUROR #12: For the first  
17 trial which was stealing, yes. For the drunken  
18 driving, no.

19 MR. HAYDEN: How do you feel?

20 PROSPECTIVE JUROR #12: I wasn't in the  
21 courtroom but--

22 MR. HAYDEN: Based upon what she told you,  
23 how do you feel she was treated?

24 PROSPECTIVE JUROR #12: Fairly. She was  
25 drunk.



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1 MR. HAYDEN: Anything about her  
2 experiences and your conversations about them that  
3 would affect you here?

4 PROSPECTIVE JUROR #12: I don't think so.

5 MR. HAYDEN: When you say you don't think  
6 so--

7 PROSPECTIVE JUROR #12: No.

8 MR. HAYDEN: Any concern at all?

9 PROSPECTIVE JUROR #12: I think I can  
10 remove myself, yes.

11 MR. HAYDEN: You can concentrate on the  
12 facts and circumstances of this case--

13 PROSPECTIVE JUROR #12: Yes.

14 MR. HAYDEN: --and determine for yourself  
15 whether or not at the time of this crash the  
16 defendant was feeling a depraved indifference to the  
17 human lives around him?

18 PROSPECTIVE JUROR #12: Yes.

19 MR. HAYDEN: Miss Shields?

20 PROSPECTIVE JUROR #13: Yes.

21 MR. HAYDEN: Ma'am, you served on a  
22 criminal jury?

23 PROSPECTIVE JUROR #13: Yes.

24 MR. HAYDEN: What type of crime?

25 PROSPECTIVE JUROR #13: Arson.

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1 MR. HAYDEN: Anything about that  
2 experience that would affect you here?

3 PROSPECTIVE JUROR #13: Not at all.

4 MR. HAYDEN: You can be fair and  
5 impartial, not only to the defense, but to the  
6 prosecution, as well?

7 PROSPECTIVE JUROR #13: Yes.

8 MR. HAYDEN: You can concentrate on the  
9 facts and circumstances and make your own  
10 determination about whether or not at the time of  
11 this crash the defendant was feeling a deprived  
12 indifference to the human lives around him?

13 PROSPECTIVE JUROR #13: Yes.

14 THE COURT: Two minutes, Mr. Hayden.

15 MR. HAYDEN: Yes, your Honor.

16 Miss Yearwood?

17 PROSPECTIVE JUROR #14: Yes.

18 MR. HAYDEN: Can you assure us you can be  
19 fair and impartial to both sides?

20 PROSPECTIVE JUROR #14: Yes.

21 MR. HAYDEN: Any reason you think you'd be  
22 less than fair and impartial?

23 PROSPECTIVE JUROR #14: None.

24 MR. HAYDEN: Thank you all for your kind  
25 attention.

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1 THE COURT: Mr. Martello?

2 MR. MARTELLO: Good morning, your Honor,  
3 good morning everyone. Ladies and gentlemen, my  
4 name is Greg Martello. I am cocounsel with  
5 Mr. LaMagna for Marty. Mr. LaMagna needed a break.  
6 He was talking too much. We need to save his voice  
7 for later.

8 I have the unenviable job of having to go  
9 over a lot of these concepts and things we've been  
10 talking about for the last two days with everyone  
11 here. You've already heard over and over again and  
12 you might be asking yourself at this point what do  
13 they think? We're not getting it? Why do they keep  
14 going over it?

15 I do agree with Mr. Hayden. It's not  
16 about what I say or what Mr. Hayden says, it's about  
17 what the judge says. The judge is going to give you  
18 the law. What we're doing-- what we're attempting  
19 to do is just go over concepts and get assurances  
20 from you that you understand these concepts and  
21 you're going to use these concepts as the fact  
22 finders in this trial, because this is a murder  
23 charge we're talking about. This is the most  
24 serious charge any citizen in America can be charged  
25 with, and so your job as jurors is that important.

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1 That's why we're taking such lengths to go over  
2 this, just so that we can be assured that we're  
3 going to have a fair jury, a jury that knows its  
4 responsibility and understands the issues in this  
5 case.

6 Now, as I'm sure you concluded already,  
7 the most important concept here is this concept of  
8 the depraved mind, depravity, because after all,  
9 this was a terrible, terrible tragedy that resulted  
10 from a car accident, but yet our client, Marty, is  
11 charged with murder. The distinction here is-- what  
12 makes this car accident different and why he's being  
13 charged with murder is did he have a depraved mind  
14 at the time of the accident. At that time what was  
15 in his mind? That's really your job, your key job  
16 here.

17 Mr. Tingwall?

18 PROSPECTIVE JUROR #2: Yes.

19 MR. MARTELLO: As a police officer, as a  
20 former police officer, you very often had to-- when  
21 you're investigating a case, you had to find out  
22 what the person was thinking at the time of the  
23 crime to know whether he had intent to do something,  
24 right?

25 PROSPECTIVE JUROR #2: We don't-- police

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1 don't figure out intent. We identify who may have  
2 done it and bring them before justice.

3 MR. MARTELLO: Okay. Then it's the jury  
4 who has to determine that.

5 PROSPECTIVE JUROR #2: Yeah.

6 MR. MARTELLO: That's right. And the way  
7 the jury determines what's intended is to look at  
8 the evidence and look at what was going on. Would  
9 that be fair to say?

10 PROSPECTIVE JUROR #2: That's fair.

11 MR. MARTELLO: Now, here, Mr. Larson, we  
12 have to determine whether he had a depraved mind.  
13 So basically we're asking you, Mr. Larson, Miss  
14 Gledhill, you have to determine what was he  
15 thinking? What was in his head at the time of the  
16 accident? How do you do that? I mean, it's easy to  
17 determine what people are doing. I just picked up a  
18 pen. That's what I just did right now. You know,  
19 if somebody asked what did Mr. Martello do, he  
20 picked up a pen.

21 If I asked you what am I thinking right  
22 now as we sit here in the courtroom today, Miss  
23 Brown, would you know what I'm thinking right now?  
24 No. I'm just standing here. You don't know what  
25 I'm thinking. But if you put things together, which

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1 is, Miss Brown, what we're going to ask you to do in  
2 this trial, if you put things together, put the  
3 evidence together, maybe you could find out what I'm  
4 thinking right now.

5 For instance, in your everyday life  
6 Mr. Frosos, when you try to determine someone's  
7 intention, what they're thinking, one of the things  
8 you listen for is what they're talking about. Like  
9 if I said to the court officer could you please open  
10 up that door for me, you can probably figure out my  
11 intention is I want to walk through the door, right,  
12 just by what I said? So talking is a technique for  
13 you, as fact finders, to determine what someone is  
14 thinking. Another thing is surrounding  
15 circumstances, watching as the person is doing the  
16 thing, then observations of other people, what they  
17 see that person doing. Then you can all determine,  
18 maybe, what's going on in a person's head.

19 Would that be fair?

20 PROSPECTIVE JUROR #8: It could be, yeah.

21 MR. MARTELLO: Now, Mr. Sheridan, I had  
22 asked the jury before what am I thinking. Well,  
23 let's look at the evidence. I'm standing here in a  
24 courtroom picking a jury. That is the circumstances  
25 I find myself in. My actions, every once in a while

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1 I look at these notes because, as I'm referring to  
2 them, I'm trying-- I'm thinking of something else to  
3 say, the next thing I'm going to say. What's coming  
4 out? My words. I'm asking questions of you. I'm  
5 explaining concepts that are important in this case.

6 If you put all those three things  
7 together, what am I talking about? The actions I'm  
8 doing, looking at this paper, and the circumstances  
9 we find ourselves in, you'd probably conclude what  
10 I'm thinking right now. It would be a fair guess to  
11 say I'm probably thinking that the most important  
12 concern in my head right now is that I pick a fair  
13 jury for Marty. I'm his lawyer, and I want him to  
14 get a fair shot and justice, and for him to get that  
15 fair shot, I have to know I have a jury that is  
16 going to be open-minded and is going to really  
17 carefully look at the facts in this case, because  
18 he's charged with murder. That's what's in my head  
19 right now.

20 If you actually put all those three things  
21 together, Miss Brown, it's actually not that hard to  
22 find out what was going on in my head, even though  
23 you don't know me, just putting together my words,  
24 the circumstances, and what I'm talking about. You  
25 probably could say to yourself, you know what? He's

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1 concerned about Marty. He's concerned about making  
2 a good jury. You'd be right. That's what I'm  
3 thinking about.

4 I'm going to need, Mr. Derita, you to do  
5 that and to employ those same techniques in the  
6 trial. It's critical. Critical. So if I told you,  
7 Mr. Derita, that you might hear evidence of things  
8 Marty said, you'll take that into account to  
9 determine what was going on in his head at the time  
10 of this accident?

11 PROSPECTIVE JUROR #4: Sure.

12 MR. MARTELLO: If you were to hear  
13 evidence of witnesses that described what he was  
14 talking about, what he was feeling, his mood, his  
15 demeanor, whether he was happy, all that, those  
16 observations of his actions, in other words, would  
17 that be something you would put together in the  
18 equation about what's going on in his head?

19 PROSPECTIVE JUROR #4: I'd listen to  
20 everything, sure.

21 MR. MARTELLO: Now, what about the last  
22 part, the circumstances?

23 PROSPECTIVE JUROR #4: Sure.

24 MR. MARTELLO: Right? If you heard  
25 evidence that his life was, whatever, going fine,



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1 all of the rest of that would be something you'd  
2 throw in the pot to say, you know what? I have a  
3 clear picture of this young man, and I know what was  
4 going on in his head.

5 PROSPECTIVE JUROR #4: Yeah.

6 MR. MARTELLO: Now, why am I so concerned  
7 about what's going on in his head? I'm concerned  
8 about what's going on in his head because you have  
9 to make that determination of whether he had a  
10 depraved mind, a wicked mind, at the time of this  
11 tragic accident.

12 Now, not surprisingly, we heard a lot of  
13 examples. The lawyers have been trying their best  
14 to come up with examples for you guys about what is  
15 a depraved mind, and the reason why we come up with  
16 examples is because it's the best way for someone to  
17 understand it.

18 Not surprisingly, the judge came up with  
19 the best example-- that's why he's the judge-- and  
20 I've got to tell you it's a great example. What the  
21 judge said yesterday was that, you know, if a guy is  
22 in a crowded, dark movie theater and shoots a gun  
23 and he doesn't care, he doesn't care, and he hits  
24 somebody, he doesn't care if he doesn't hit  
25 somebody, he doesn't care about life, he doesn't

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1 care about who he hurts. The judge is right.  
2 That's a depraved mind. It's a wicked mind. He  
3 doesn't care. He just takes that gun, bang, shoots  
4 it in a crowded, dark movie theater and doesn't care  
5 if he hits a chair and doesn't care if he hits a  
6 person in the chair.

7 Miss Tung, by the judge's example, would  
8 you say that if you have evidence of a person doing  
9 that type of action, would that be a wicked mind, a  
10 depraved mind, at the time of the shooting?

11 PROSPECTIVE JUROR #11: Yes.

12 MR. MARTELLO: Would everyone agree with  
13 that?

14 Miss Kaul?

15 PROSPECTIVE JUROR #9: Yes.

16 MR. MARTELLO: Miss Yearwood?

17 PROSPECTIVE JUROR #14: Yes.

18 MR. MARTELLO: How about you, Miss Baez?

19 PROSPECTIVE JUROR #6: Yes.

20 MR. MARTELLO: Now, that's what a depraved  
21 mind is. What about the reverse of that? Same set  
22 of facts. A guy goes into the movie theater, a  
23 crowded movie theater, and shoots a gun. Let me  
24 change the facts around a little bit.

25 Miss Frosos, let's say the person shooting

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1 the gun this time, in the second example, he didn't  
2 know anybody was in the theater. He didn't even  
3 know it was a movie theater. He was unfamiliar with  
4 the building. He walked in there and he didn't know  
5 anybody was there. In fact, he thought nobody was  
6 in the movie theater. He shoots a gun and somebody  
7 gets hurt.

8 Now, what he did was still stupid and  
9 still negligent and he probably shouldn't have done  
10 it and it was still a stupid thing to do, but what  
11 was going on in that second shooter's head, in your  
12 mind, was he an evil, wicked person or was he a  
13 stupid, negligent person? Do you see the  
14 distinction? Does everyone see that? That's  
15 critical.

16 But I'm in a quandary here. In both  
17 examples, with shooter number one with the judge, a  
18 person died when the person shot in that crowded  
19 movie theater, and a person died in example number  
20 two with the person that wasn't wicked, who didn't  
21 have a depraved mind and was just stupid and  
22 negligent. So you have the same result but the  
23 mindset is different.

24 Do you see the distinction, Miss Shields?

25 PROSPECTIVE JUROR #13: Yes.

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1 MR. MARTELLO: Very much so. That's the  
2 critical thing here.

3 THE COURT: Two minutes, Mr. Martello.

4 MR. MARTELLO: All right.

5 So that goes to the extent of, Miss Brown,  
6 what Mr. LaMagna was talking about before. If you  
7 determine that at the end of the case he did not  
8 have that wicked mind, he was not depraved, even  
9 though the tragic accident happened, you would not  
10 be able to vote murder, right? That's very  
11 important. Okay?

12 Would you trust the law as the judge gives  
13 it to you? To trust the law, there are different  
14 degrees of accountability. He may not be  
15 accountable for murder, he's still accountable for  
16 doing a terrible, negligent thing, but he's not  
17 accountable for the charge that the district  
18 attorney has placed on him.

19 Do you see that, Miss Brown?

20 Mr. Frosos?

21 And so if, Miss Kaul, if you determine  
22 that the DA has overcharged him, would you not vote  
23 that way?

24 Lastly, Mr. LaMagna had talked about  
25 credibility of witnesses, and we talked about

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1           whether there were reports changed and how do you  
2           determine if somebody is credible. Let me give you  
3           an example. Let's say someone is working for a  
4           pharmaceutical company and he changes his report so  
5           medicine could be sold.

6                     You wouldn't buy that medicine, would you,  
7           Miss Vargas?

8                     PROSPECTIVE JUROR #1: No.

9                     MR. MARTELLO: You wouldn't buy it. You  
10           couldn't trust that scientist because he changed a  
11           report, because his employer who pays him told him  
12           to change the report. That's bad medicine. That's  
13           life and death. So you wouldn't take that medicine.

14                    The same thing here. We're dealing with a  
15           young man's life. If you hear witnesses on that  
16           stand that aren't credible that change their  
17           reports, are you going to use that evidence, that  
18           witness' testimony that's not credible, to determine  
19           his life?

20                    PROSPECTIVE JUROR #1: No.

21                    MR. MARTELLO: You wouldn't do that?

22                    PROSPECTIVE JUROR #1: No.

23                    MR. MARTELLO: None of us would want that  
24           for ourselves.

25                    THE COURT: Time, Mr. Martello.

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1 MR. MARTELLO: Thank you, Judge.

2 THE COURT: At this time I'm going to give  
3 everyone in the courtroom a five-minute break, so  
4 please don't talk about the case. See you in a  
5 little bit.

6 (Whereupon, the jury panel exited the  
7 courtroom.)

8 (Whereupon, a brief recess was taken.)

9 THE CLERK: People, challenges for cause  
10 as to seats one and two at this time?

11 MR. HAYDEN: No, your Honor.

12 THE CLERK: Defendant, challenges for  
13 cause seats one and two?

14 MR. LAMAGNA: No, your Honor.

15 THE CLERK: People, peremptory challenges  
16 as to seats one and two at this time?

17 MR. HAYDEN: No, your Honor.

18 THE CLERK: Defense, peremptory challenges  
19 as to seats one and two at this time?

20 MR. LAMAGNA: Number two, your Honor.

21 THE CLERK: Seat number one has now become  
22 juror number eleven.

23 People, challenge for cause seat number  
24 three?

25 MR. HAYDEN: No, your Honor.

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1 THE CLERK: Defense, challenge for cause  
2 seat number three?

3 MR. LAMAGNA: No, your Honor.

4 THE CLERK: People, peremptory challenge  
5 seat number three?

6 MR. HAYDEN: No, your Honor.

7 THE CLERK: Defense, peremptory challenge  
8 seat number three?

9 MR. LAMAGNA: Yes, your Honor.

10 THE CLERK: People, challenge for cause  
11 seat number four?

12 MR. HAYDEN: No, your Honor.

13 THE CLERK: Defense, challenge for cause  
14 seat number four?

15 MR. LAMAGNA: No, your Honor.

16 THE CLERK: People, peremptory challenge  
17 seat number four?

18 MR. HAYDEN: No, your Honor.

19 THE CLERK: Defense, peremptory challenge  
20 seat number four?

21 MR. LAMAGNA: No, your Honor.

22 THE CLERK: That's juror number twelve.

23 People, challenge for cause seat number  
24 five?

25 MR. HAYDEN: No, your Honor.

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1 THE CLERK: Defense, challenge for cause  
2 seat number five?

3 MR. LAMAGNA: No, your Honor.

4 THE CLERK: People, peremptory challenge  
5 seat number five?

6 MR. HAYDEN: No, your Honor.

7 THE CLERK: Defense, peremptory challenge  
8 seat number five?

9 MR. LAMAGNA: Yes, your Honor.

10 THE CLERK: People, challenge for cause  
11 seat number six?

12 MR. HAYDEN: No, your Honor.

13 THE CLERK: Defense, challenge for cause  
14 seat number six?

15 MR. LAMAGNA: No, your Honor.

16 THE CLERK: People, peremptory challenge  
17 seat number six?

18 MR. HAYDEN: No, your Honor.

19 THE CLERK: Defense, peremptory challenge  
20 seat number six?

21 MR. LAMAGNA: Yes, your Honor.

22 THE CLERK: People, challenge for cause  
23 seat number seven?

24 MR. HAYDEN: No, your Honor.

25 THE CLERK: Defense, challenge for cause



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1 seat number seven?

2 MR. LAMAGNA: No, your Honor.

3 THE CLERK: People, peremptory challenge

4 seat number seven?

5 MR. HAYDEN: No, your Honor.

6 THE COURT: Juror number seven is

7 alternate number one.

8 MR. LAMAGNA: That's our first alternate.

9 THE COURT: Try to work together. I want  
10 to try to get five or six alternates.

11 THE CLERK: People, challenge for cause  
12 seat number eight?

13 MR. HAYDEN: No, your Honor.

14 THE CLERK: Defense, challenge for cause  
15 seat number eight?

16 MR. LAMAGNA: No.

17 THE CLERK: People, peremptory challenge  
18 seat number eight?

19 MR. HAYDEN: No, your Honor.

20 THE CLERK: Defense, peremptory challenge  
21 seat number eight?

22 MR. LAMAGNA: No, your Honor.

23 THE COURT: That's alternate number two.

24 THE CLERK: People, challenge for cause  
25 seat number nine?

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1 MR. HAYDEN: No, your Honor.

2 THE CLERK: Defense, challenge for cause  
3 seat number nine?

4 MR. LAMAGNA: No, your Honor.

5 THE CLERK: People, peremptory challenge  
6 seat number nine?

7 MR. HAYDEN: Yes, your Honor.

8 THE CLERK: People, challenge for cause  
9 seat number ten?

10 MR. HAYDEN: No, your Honor.

11 THE CLERK: Defense, challenge for cause  
12 seat number ten?

13 MR. LAMAGNA: No, your Honor.

14 THE CLERK: People, peremptory challenge  
15 seat number ten?

16 MR. HAYDEN: No, your Honor.

17 THE CLERK: Defense, peremptory challenge  
18 seat number ten?

19 MR. LAMAGNA: No, your Honor.

20 THE CLERK: That's alternate number three,  
21 which is Sheridan.

22 THE COURT: You guys are doing good. Keep  
23 it up.

24 THE CLERK: People, challenge for cause  
25 seat number eleven?

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1 MR. HAYDEN: No, your Honor.

2 THE CLERK: Defense, challenge for cause  
3 seat number eleven?

4 MR. LAMAGNA: No, your Honor.

5 THE CLERK: People, peremptory challenge  
6 seat number eleven?

7 MR. HAYDEN: No, your Honor.

8 THE CLERK: Defense, peremptory challenge  
9 seat number eleven?

10 MR. LAMAGNA: Yes, your Honor.

11 THE CLERK: People, challenge for cause  
12 seat number twelve?

13 MR. HAYDEN: No, your Honor.

14 THE CLERK: Defense, challenge for cause  
15 seat number twelve?

16 MR. LAMAGNA: No, your Honor.

17 THE CLERK: People, peremptory challenge  
18 seat number twelve?

19 MR. HAYDEN: Yes, your Honor.

20 THE CLERK: People, challenge for cause  
21 seat number thirteen?

22 MR. HAYDEN: No, your Honor.

23 THE CLERK: Defense, challenge for cause  
24 seat number thirteen?

25 MR. LAMAGNA: No, your Honor.

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1 THE CLERK: People, peremptory challenge  
2 seat number thirteen?

3 MR. HAYDEN: No, your Honor.

4 THE CLERK: Defense, peremptory challenge  
5 seat number thirteen?

6 MR. LAMAGNA: No, your Honor.

7 THE CLERK: That's alternate number four,  
8 Shields.

9 People, challenge for cause, seat number  
10 fourteen?

11 MR. HAYDEN: No, not for cause.

12 THE CLERK: Defense for cause, seat number  
13 fourteen?

14 MR. LAMAGNA: No, your Honor.

15 THE CLERK: People, peremptory challenge  
16 seat number fourteen?

17 MR. HAYDEN: No, your Honor.

18 THE CLERK: Defendant, peremptory  
19 challenge seat number fourteen?

20 MR. LAMAGNA: Yes, your Honor.

21 THE COURT: All right. We're going to put  
22 six people in the box. You can have five minutes  
23 for two more alternates.

24 Would you produce the jury, please?

25 (Whereupon, the prospective jury panel

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1 entered the courtroom.)

2 THE CLERK: Case on trial, indictment

3 1910N-2005, People v. Martin Heidgen.

4 People ready?

5 MR. HAYDEN: Ready, your Honor.

6 THE CLERK: Defendant ready?

7 MR. LAMAGNA: Ready, your Honor.

8 THE CLERK: The defendant is present, your  
9 Honor.

10 The following jurors please remain seated  
11 in the box:

12 Michelle Vargas, Michael Derita, Charmen  
13 Brown, Peter Frosos, Joseph Sheridan and Meryl  
14 Shields.

15 All other jurors follow the directions of  
16 the officers, please.

17 (Whereupon, the unselected jurors were  
18 excused.)

19 (Whereupon, the jurors were duly sworn.)

20 THE COURT: With the exception of two more  
21 alternates, which we'll select in a few minutes from  
22 the balance of people seated in the back of the  
23 courtroom, we will have a jury. We will be starting  
24 9:30 Monday morning.

25 Between now and then, as you know, I'm

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1 going to let all of you know, the same for those of  
2 you who will ultimately be selected as alternates,  
3 you must not discuss the case among yourselves or  
4 with anyone else until the entire case has been  
5 completed and the Court has given you its charge as  
6 to the law which applies to the counts of the  
7 indictment which will be given to you for your  
8 consideration.

9 You must keep an open mind until all of  
10 the evidence has been presented and you are charged  
11 as to the law.

12 You must not read or listen to any  
13 accounts or discussions of the case in the event it  
14 is reported by newspapers or other media. That's  
15 going to be a hard one. It probably is going to be  
16 reported. Please don't read about it or don't  
17 listen about it.

18 You must not visit or view the place or  
19 premises where the offenses charged were allegedly  
20 committed or any other premises or place involved in  
21 the case.

22 You are not to permit any party to discuss  
23 the case with you or attempt to influence you. You  
24 must promptly report to the Court any incident  
25 within your knowledge involving an attempt by any

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1 person to improperly influence any member of the  
2 jury.

3 Prior to discharge you may not accept any  
4 payment or benefit in consideration for supplying  
5 any information concerning this trial.

6 I also advise you if at any time any of  
7 the participants in this trial should meet you in  
8 the hallways or outside the building, they may not  
9 speak to or even acknowledge you to avoid any  
10 appearance of impropriety.

11 Have a nice weekend. See you Monday  
12 morning.

13 (Whereupon, the jurors exited the  
14 courtroom.)

15 THE CLERK: Seat number one, Kathy Kneher,  
16 K-N-E-H-E-R; seat number two, Shari Dominianni,  
17 D-O-M-I-N-I-A-N-N-I; seat number three, Nancy  
18 Cannataro, C-A-N-N-A-T-A-R-O; seat number four,  
19 Marie Bastien, B-A-S-T-I-E-N; seat number five,  
20 Robert Winterton, W-I-N-T-E-R-T-O-N; seat number  
21 six, Peter Didangi, D-I-D-A-N-G-I.

22 THE COURT: Okay. Welcome, ladies and  
23 gentlemen. My first question is do any of you know  
24 any of us?

25 (No response.)

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1 Did any of you recognize any names I read  
2 on the witness list?

3 PROSPECTIVE JUROR #6: I never saw the  
4 list.

5 THE COURT: Sir, why don't you have a look  
6 at this and see if you know any of these names.

7 PROSPECTIVE JUROR #6: No.

8 THE COURT: Now, would it be fair to  
9 assume, as in the last several panels, many of you,  
10 if not all of you, know something about this case  
11 from what you've read or learned over the course of  
12 time before you got here?

13 Some yes, some no.

14 Those of you who do know something about  
15 this case, in your present frame of mind do you  
16 think you could be fair to the defendant and listen  
17 fairly and impartially to the evidence that will be  
18 presented during this trial?

19 Everybody can give me a yes on that?

20 PROSPECTIVE JUROR #6: I'm not sure.

21 THE COURT: You are not sure?

22 PROSPECTIVE JUROR #6: No.

23 THE COURT: Go back to central jury, sir.

24 Fill the box.

25 (Whereupon, the prospective juror was



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1           excused.)

2                       THE CLERK:   Seat number six, Diana Lituma,  
3           L-I-T-U-M-A.

4                       (No response.)

5                       Mike Lomas, L-O-M-A-S.

6                       (No response.)

7                       Seat number six, Jeanne Kontje.

8                       THE COURT:   How about you, ma'am?   Do you  
9           know any of us?

10                      PROSPECTIVE JUROR #6:   No.

11                      THE COURT:   Do you know anybody on the  
12           witness list?

13                      PROSPECTIVE JUROR #6:   No.

14                      THE COURT:   Despite anything you might  
15           have learned about this case before you got here,  
16           presently in your frame of mind do you think you can  
17           be fair to the defendant and listen to the evidence?

18                      PROSPECTIVE JUROR #6:   Yes.

19                      THE COURT:   Okay.

20                      MS. MCCORMICK:   Good afternoon.   I  
21           appreciate that you've been listening to all of this  
22           day after day.   Thinking about what you've heard,  
23           about the effects of alcohol on people or on  
24           someone's state of mind, or do you know anybody who  
25           has been accused of driving while intoxicated that

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1           you think we should know about, is there anything  
2           about what you've heard you want to bring to our  
3           attention?

4                     Then I have to talk about this example  
5           that Mr. Martello just used, taken from the judge,  
6           about shooting into a dark movie theater. I have to  
7           ask you if that same person who shot the gun into  
8           the movie theater did so after he passed a huge sign  
9           that said movie theater, after he passed a billboard  
10          that had the movie times listed and it said movie  
11          playing right now, that if he then took a gun and  
12          shot into a darkened room in that theater but after  
13          the fact said, gee, I didn't know, I didn't mean it,  
14          would you consider those things, all of those  
15          things, in determining whether he knew or should  
16          have known what effect that would have and if he was  
17          indifferent or depraved to other people and didn't  
18          care? Would you consider those things?

19                     Would you, ma'am?

20                     I'm going really fast. I'm sorry.

21                     Do we all agree that you cannot undue  
22          something by saying sorry afterwards? Would you  
23          agree that you could be genuinely sorry afterwards,  
24          but it's not going to undue what you've done? Would  
25          you agree?

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1 And also in your life experiences would  
2 you also agree that people wear social masks?  
3 Perhaps you don't know people as well as you think  
4 you do. Say you work with somebody and you work  
5 with them every day but you don't see them outside  
6 the office, do you think there could be another side  
7 to that person? Do you think that people have other  
8 sides than what they show the public? Do you agree?

9 Do you think it's possible that somebody  
10 could be set off by something and at that moment,  
11 though they are an entirely different person the  
12 rest of their life, at that moment they behave in a  
13 way unexpected to people who have dealt with them at  
14 work or at school?

15 Have each of you seen news reports or  
16 accounts where neighbors and friends, after some  
17 horrific event, were interviewed and said, my God, I  
18 never would have thought that. I am really so  
19 surprised. Does everybody agree that how well you  
20 know somebody is dependent on what they're willing  
21 to show you? Do you agree?

22 So the last thing, because you know that  
23 we're looking for a fair jury, and there's going to  
24 be a lot of testimony and there's going to be some  
25 science and some math, and there's going to be,

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1 maybe, some distractions throughout this trial, can  
2 I ask each one of you for your assurance that while  
3 you are listening to the evidence in this case that  
4 you will keep your eye on the ball, or, more  
5 accurately, keep your eye on that pick-up truck and  
6 how the defendant was driving it at the time?  
7 Because you will be called upon, if you become a  
8 juror in this case, to decide about his behavior at  
9 that time and what that behavior says about whether  
10 or not he was indifferent to other people around  
11 him. Would you keep your eye on that truck?

12 Thank you.

13 I have nothing further, Judge.

14 THE COURT: Mr. LaMagna?

15 MR. LAMAGNA: Thank you, your Honor.

16 Hello, ladies and gentlemen. Put simply,  
17 as we all know as adults, this is going to be about  
18 fairness, about justice. You all agree with that?

19 If a person is charged with a crime, if  
20 you're a juror, it's about fairness. It's about  
21 whether the district attorney, the government,  
22 proves their case beyond a reasonable doubt; isn't  
23 that correct?

24 You would agree, would you not, that it's  
25 not about vengeance, it's about justice?

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1 PROSPECTIVE JUROR #1: Yes.

2 MR. LAMAGNA: You would agree it's not  
3 about sympathy or emotion, it's about justice, isn't  
4 it? It's not about politics, certainly. You would  
5 agree with that?

6 PROSPECTIVE JUROR #1: Yes.

7 MR. LAMAGNA: Would you agree with that?

8 PROSPECTIVE JUROR #2: Yes.

9 MR. LAMAGNA: Would you agree with that?

10 PROSPECTIVE JUROR #3: Yes.

11 PROSPECTIVE JUROR #5: Yes.

12 MR. LAMAGNA: You would agree, would you  
13 not, that it's not about a political agenda of a  
14 district attorney to charge murder on a DWI case  
15 when she ran on being hard on DWI.

16 MS. MCCORMICK: Objection, Judge.

17 THE COURT: Sustained.

18 MR. LAMAGNA: You would agree that life  
19 isn't always black and white. There are shades of  
20 gray. Would you agree with that?

21 And no matter how terrible a result is,  
22 there are degrees of culpability, the most extreme  
23 being murder, as if somebody intentionally, in cold  
24 blood, killed somebody. There's never anything  
25 between? Would we agree that if the judge gives you

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1 lesser charges of murder, it's still criminal  
2 charges, would you consider those?

3 In viewing the evidence can you all  
4 promise that you're going to be fair, especially  
5 with the gravity of the charge here and this  
6 person's life in your hands?

7 You promise you will take that  
8 responsibility with the same gravity of the charge  
9 and view all the evidence critically?

10 Whether there's changes, mistakes,  
11 excuses, that's not evidence. Thank could be doubt  
12 too, couldn't it?

13 You can all promise you can be fair and  
14 impartial?

15 Thank you.

16 THE COURT: All right, everybody. I'm  
17 going to give everybody a five-minute break. Don't  
18 go too far away. Don't talk about the case.

19 (Whereupon, the jury panel exited the  
20 courtroom.)

21 THE CLERK: People, challenge for cause as  
22 to seat number one?

23 MS. MCCORMICK: No, your Honor.

24 THE CLERK: Defense, challenge for cause,  
25 seat number one?

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1 MR. LAMAGNA: No, your Honor.

2 THE CLERK: People, peremptory challenge  
3 seat number one?

4 MS. MCCORMICK: No, your Honor.

5 THE CLERK: Defense, peremptory challenge  
6 seat number one?

7 MR. LAMAGNA: Yes, your Honor.

8 THE CLERK: People, challenge for cause  
9 seat number two?

10 MS. MCCORMICK: No cause, your Honor.

11 THE CLERK: Defense, challenge for cause  
12 seat number two?

13 MR. LAMAGNA: No, your Honor.

14 THE CLERK: People, peremptory challenge  
15 seat number two?

16 MS. MCCORMICK: Yes, your Honor.

17 THE CLERK: People, challenge for cause  
18 seat number three?

19 MS. MCCORMICK: No, your Honor.

20 THE CLERK: Defense, challenge for cause  
21 seat number three?

22 MR. LAMAGNA: No, your Honor.

23 THE CLERK: People, peremptory challenge  
24 seat number three?

25 MS. MCCORMICK: No, your Honor.

People v. Heidgen

1 THE CLERK: So that's alternate number  
2 five at this time. Cannataro becomes alternate  
3 number five.

4 People, challenge for cause, seat number  
5 four?

6 MS. MCCORMICK: No, your Honor.

7 THE CLERK: Defense, challenge for cause,  
8 seat number four?

9 MR. LAMAGNA: No, your Honor.

10 THE CLERK: People, peremptory challenge  
11 seat number four?

12 MS. MCCORMICK: Yes, your Honor.

13 THE CLERK: People, challenge for cause  
14 seat number five?

15 MS. MCCORMICK: No, your Honor.

16 THE CLERK: Defendant, challenge for cause  
17 seat number five?

18 MR. LAMAGNA: No, your Honor.

19 THE CLERK: People, peremptory challenge  
20 seat number five?

21 MS. MCCORMICK: No, your Honor..

22 THE CLERK: Defense, peremptory challenge  
23 seat number five?

24 MR. LAMAGNA: No, your Honor.

25 THE COURT: We have a jury.



People v. Heidgen

1 Okay. Would you produce the jury?

2 (Whereupon, the prospective jury panel  
3 entered the courtroom.)

4 THE CLERK: Case on trial, indictment  
5 number 1910N-05, People v. Martin Heidgen.

6 People ready?

7 MR. HAYDEN: Ready, your Honor.

8 THE CLERK: Defendant ready?

9 MR. LAMAGNA: Ready, your Honor.

10 THE CLERK: The defendant is present, your  
11 Honor.

12 THE CLERK: Will Nancy Cannataro and  
13 Robert Winterton remain seated. The other jurors,  
14 please step out. Follow the directions of the  
15 officers.

16 (Whereupon, the unselected jurors were  
17 excused.)

18 (Whereupon, the jurors were duly sworn.)

19 THE COURT: Please have a seat. We now  
20 have selected our jury. We will begin this case, in  
21 terms of opening statements and calling of  
22 witnesses, on Monday morning.

23 My comments now are to the rest of you in  
24 the room who may feel as though you have been  
25 sitting here wasting your time and haven't had an

People v. Heidgen

1 opportunity to participate in the process. Usually,  
2 I simply tell people that is true. I remind them by  
3 their participation, they assure all of us a fair  
4 trial, but you've gone even an extra mile.

5 I told you that the case involves terrible  
6 injuries. I told you it will be a very long ordeal,  
7 lasting as much as five weeks. I told you that you  
8 might even be sequestered in a hotel during  
9 deliberations. I told you that the task of being a  
10 juror in this case was likely and will probably be  
11 onerous, and yet here you are. You're each to be  
12 congratulated in insuring all of us that we, in  
13 Nassau County, no matter what the charges are  
14 against us, have jurors willing to give us a fair  
15 trial.

16 You now are all excused from jury duty.

17 Have a nice weekend. See you Monday  
18 morning.

19 (Whereupon, the jury panel exited the  
20 courtroom.)

21 (Whereupon, the Court stood in recess for  
22 the day.)  
23  
24  
25

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NASSAU : CRIMINAL PART 31

3 -----x  
4 THE PEOPLE OF THE STATE OF NEW YORK

5 -against-

6 MARTIN HEIDGEN,

7 DEFENDANT.  
8 -----x

9 INDICTMENT #: 1910N-06

Mineola, New York  
September 11, 2006  
VOLUME II

10 B E F O R E: HONORABLE ALAN L. HONOROF  
11 Acting Supreme Court Justice

12 A P P E A R A N C E S:

13 HON. KATHLEEN M. RICE  
14 District Attorney, Nassau County  
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15 BY: ROBERT HAYDEN, ESQ.  
16 Assistant District Attorney  
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21 and  
22 GREGORY MARTELLO, ESQ.

23 o0o  
TRIAL  
o0o

24 Gigi Wright, R.P.R.  
25 Official Court Reporter

## Proceedings

1 (In chambers. Ex parte proceeding.)

2 THE COURT: Good morning. Good morning.

3 Would you please explain what this is about?

4 MS. McCORMICK: A subpoena had been issued  
5 for letters that were admitted to have been sent to  
6 Ms. Gerner from the defendant from jail. We had reason  
7 to believe that those letters might contain admissions  
8 or information relevant to this trial so we subpoenaed  
9 those letters.

10 Ms. Gerner produced only an empty envelope  
11 from a letter that she says she has thrown out. There  
12 is nothing about the content of this particular letter  
13 that would lead us to believe that it would have been  
14 retained, unlike the last letter that we brought to the  
15 Court's attention.

16 So all things being said, although we  
17 appreciate the Court asking her to search for the  
18 letter, she has assured us that she has searched for  
19 the letter, and I have no reason to believe that it is  
20 being withheld at this time.

21 THE COURT: Would you stand up please.

22 (Whereupon, Ms. Gerner, was duly sworn by  
23 the Court.)

24 THE COURT: Please a seat. Are you familiar  
25 with the letter the district attorney has been telling

## Proceedings

1 me about?

2 MS. GERNER: The letter from Josh, I'm  
3 familiar.

4 THE COURT: Do you know where it is?

5 MS. GERNER: I gave it to them last week. I  
6 found it.

7 THE COURT: No. That is not the letter we  
8 are referring to. I'm referring to the letter sent  
9 directly to you.

10 MS. GERNER: No one specific letter. He  
11 never really discussed the case with me. It was like  
12 he said -- it was all small talk.

13 THE COURT: Did he send you a letter?

14 MS. GERNER: Yes.

15 THE COURT: Did he send you more than one  
16 letter?

17 MS. GERNER: Yes.

18 THE COURT: Where are the letters?

19 MS. GERNER: I don't know. I threw them out.

20 THE COURT: All right. I'm ordering you to  
21 search for the letters.

22 MS. GERNER: Okay.

23 THE COURT: If you find them, or if you don't  
24 find them, you are to contact the district attorney  
25 immediately and let her know, yes or no, as to the

## Proceedings

1 search and what it revealed.

2 MS. GERNER: okay.

3 THE COURT: Okay. Thank you.

4 (In open court. Defendant present.)

5 THE CLERK: Case on trial. This is  
6 Indictment 1910N of 2005, People of the State of New  
7 York versus Martin Heidgen. All parties present.  
8 Defendant is present; jurors are not present.

9 Appearances for the record.

10 MR. HAYDEN: Robert Hayden for the People.

11 MR. LaMAGNA: Steven LaMagna for the  
12 defendant. Also present is Greg Martello for the  
13 defendant.

14 MS. McCORMICK: Maureen McCormick for the  
15 People.

16 THE COURT: Bring in the jury.

17 COURT OFFICER: Jury entering.

18 (Whereupon, the jury entered the courtroom,  
19 and upon taking their respective seats the following  
20 occurred:)

21 THE CLERK: Case on trial, Indictment number  
22 1910N of 2005, People versus Martin Heidgen.

23 People ready?

24 MR. HAYDEN: Ready, Your Honor.

25 THE CLERK: Defendant ready?

## Proceedings

1 MR. LaMAGNA: Defendant is ready, your Honor.

2 THE CLERK: The defendant is present, your  
3 Honor; the jurors are seated.

4 THE COURT: Thank you. We have already had  
5 one juror issue come up, which we resolved in chambers.  
6 I found, based on a phone conversation we had with  
7 juror number three, that juror number three was  
8 unavailable under the C.P.L. and, consequently, I  
9 exercised my authority, and replaced juror number three  
10 with alternate number one.

11 Members of the jury, we are about to begin  
12 the trial of this case. The trial has commenced with  
13 the selection of the jury. At this point I am required  
14 by law to instruct you generally concerning your basic  
15 functions, duties and conduct, and to acquaint you in a  
16 general way to trial procedure and the general rules  
17 which apply to jury trials, so you can better  
18 understand and help you reach a proper verdict. It is  
19 hoped that these remarks will be helpful, particularly  
20 those of you serving as jurors for the first time.

21 The comments and instructions which follow  
22 are designed to acquaint you with the separate  
23 functions, duties and responsibilities of the Court,  
24 attorneys and jury, and to give you a better  
25 understanding as to how you, as jurors, should conduct

## Proceedings

1 yourselves during the trial.

2 As you know, this is a criminal case. And it  
3 has been brought by the People upon an indictment  
4 accusing the defendant, Martin Heidgen, of the crimes  
5 of Murder in the Second Degree, two counts; Assault in  
6 the First Degree, three counts; Reckless Endangerment  
7 in the First Degree, two counts and; Driving While  
8 Intoxicated, two counts.

9 Please keep in mind that an indictment is  
10 simply an accusation and it is not in any way evidence  
11 of the allegations that it contains. It is merely the  
12 device used in our law to bring the charges of the  
13 accused to trial. The defendant has pleaded not guilty  
14 to the indictment. According to the law, the People  
15 have the burden of proving beyond a reasonable doubt  
16 each and every element of each of the crimes charged in  
17 the indictment. The defendant does not have to prove  
18 anything. The defendant is presumed to be innocent.

19 The next step in the trial will be an opening  
20 statement by the People, represented by the district  
21 attorney, during which he is required by law to  
22 indicate to you what he intends to prove by way of  
23 evidence to support the charges set forth against the  
24 defendant.

25 Subsequent to that defense counsel, if he



## Proceedings

1 desires, may also make an opening statement. The  
2 opening statement will enable the Court and the jury to  
3 better understand the testimony and the evidence that  
4 will follow at the trial.

5 What counsel for either party says in an  
6 opening statement is not evidence. You may consider  
7 the opening statement as a preview of what each side  
8 intends to prove by way of evidence in the case.

9 After the opening statement or statements the  
10 district attorney will present a witness or witnesses  
11 who will be questioned by him. This is called direct  
12 examination.

13 After the district attorney completes his  
14 questions defense counsel will be given an opportunity  
15 to question the witness. This is called  
16 cross-examination. After the People have concluded the  
17 calling of their witnesses and have accomplished the  
18 introduction of any exhibits admissible into evidence,  
19 the defendant may offer evidence in his defense and,  
20 also if he chooses, offer exhibits into evidence.

21 There may be legal motions at various times  
22 during the trial and at those times you will be  
23 excused.

24 After the defendant rests and the People have  
25 rested, the defendant may make a closing argument or

## Proceedings

1 summation, following which the People may make a  
2 closing argument or summation, then I will charge you  
3 on the law and you will retire to deliberate for the  
4 purpose of reaching a verdict.

5 That is a general outline of the trial  
6 procedure. You, the members of the jury, are the sole  
7 judges of the facts. You, and you alone, will have the  
8 responsibility to find and determine the facts.

9 On the other hand, when I instruct you on the  
10 law during the course of or at the close of the trial  
11 you must follow my instructions on the law exactly as I  
12 give them to you, without any hesitation or  
13 reservation, even though you may disagree with my  
14 instructions.

15 Exhibits, such as photographs, documents or  
16 other tangible objects presented by counsel during the  
17 course of the trial will be first marked solely for  
18 identification. Such exhibits are not evidence unless  
19 and until they are received in evidence by order of the  
20 Court. For the most part, evidence consists of  
21 testimony of witnesses under oath and exhibits which  
22 are introduced into evidence.

23 Questions in and of themselves are not  
24 evidence. Therefore, you cannot infer any fact from  
25 the mere asking of a question. It is the answer,

## Proceedings

1 coupled with the question, that constitutes evidence.

2 During the course of the trial either  
3 attorney, the district attorney or defense counsel may  
4 object to a question or an answer on the ground that  
5 somehow it is legally improper or inadmissible.

6 If I sustain the objection that means I  
7 believe the question or the answer was in some manner  
8 improper. Therefore, in the first instance the  
9 question may not be asked and; in the second instance,  
10 if an answer has been given I will strike it out and  
11 the answer is no longer evidence in the case, and you  
12 are to disregard it.

13 If I overrule the objection then it means  
14 that the question is proper, and I will permit it to be  
15 answered. Or if already answered, I will permit the  
16 answer to stand as evidence in the case. Please do not  
17 hold it against either attorney if I rule against them.

18 As I have already explained, you must not  
19 discuss this case amongst yourselves or with anyone  
20 else until the entire case has been completed and the  
21 Court has given you the charge on the law which applies  
22 to the counts of the indictment, which will be given to  
23 you for your consideration.

24 You must keep an open mind until all of the  
25 evidence is presented and you are charged as to the

## Opening - People

1 law.

2 You must not read or listen to any accounts  
3 or discussion of the case in the event it is reported  
4 by any newspaper or other media.

5 You must not visit or view the premises or  
6 place where the offense or offenses charged were  
7 allegedly committed, or any other premises or place  
8 involved in the case.

9 You are not to permit any party to discuss  
10 this case with you or attempt to influence you. You  
11 must promptly report to the Court any incident within  
12 your knowledge involving an attempt by any person to  
13 improperly influence any member of the jury.

14 Prior to discharge you may not request,  
15 accept or discuss any payment or benefit in  
16 consideration for supplying any information concerning  
17 this trial.

18 I also advise you that if at any time either  
19 any of the participants in this trial shall meet you in  
20 the hallways or outside of the building they may not  
21 speak to you or even acknowledge you to avoid any  
22 appearance of impropriety.

23 We will now proceed with the next step in the  
24 trial which is the opening statement by the People.

25 MR. HAYDEN: I'm going to take you back to

## Opening - People

1 around 2 o'clock on the early morning of Saturday, July  
2 2nd of 2005. The air outside was warm and clear.  
3 Christopher and Denise Tangney were sitting in the  
4 comfort of a long, black limousine moving smoothly  
5 along the southbound Meadowbrook Parkway approaching  
6 the Babylon Turnpike overpass. There were on their way  
7 home to Long Beach.

8 Fifty-nine year old Stanley Rabinowitz was  
9 driving the limousine about 60 miles an hour, and the  
10 Tangneys had no care in the world.

11 Friday, July 1st, had provided a beautiful  
12 evening for Christopher and Denise. Their younger  
13 daughter, Lisa, had been married on the beach in  
14 Bayville. The scene was picture perfect, the food was  
15 good, the music was good. But most important they  
16 celebrated the day with loved ones, with Lisa and the  
17 groom, David; with their 34 year old son, Thomas; with  
18 their older daughter, Jennifer and her husband Neil and  
19 their granddaughters, seven year old Katie and five yea  
20 old Grace.

21 Christopher and Denise shared the passenger  
22 compartment in the limousine with Jennifer, Neil, Katie  
23 and Grace. The girls were sound asleep after one of  
24 the biggest days of their young lives. It was like a  
25 beautiful dream for the entire family.

## Opening - People

1           Within seconds that beautiful dream shattered  
2           with the explosive impact of crunching metal and  
3           breaking glass. Within seconds that beautiful dream  
4           became a nightmare from which a tiny family were never  
5           fully awakened.

6           About 2 o'clock, early in the morning, there  
7           was another vehicle, a pickup truck, moving steadily  
8           along the southbound Meadowbrook Parkway. The only  
9           problem was it was moving northbound, ignoring several  
10          sets of oncoming headlights, ignoring cars with blaring  
11          horns. The defendant kept coming the wrong way with a  
12          blood alcohol content more than three times the legal  
13          limit. The defendant drove rapidly northbound along  
14          the southbound center lane of the parkway for miles  
15          before entering a collision course with the limousine.  
16          He never swerved, he never wavered, he just kept  
17          coming. The impact was horrific.

18          Denise suffered injuries, including a broken  
19          hip, and a shattered knee. Christopher suffered  
20          injuries, including compound fractures of the hip and  
21          leg, along with internal injuries. Neil suffered  
22          injuries, including a broken back and a collapsed lung.  
23          They were the luck lucky ones. Mr. Rabinowitz was  
24          crushed inside the driver's compartment of the  
25          limousine and died instantly. Katie was decapitated

## Opening - People

1 and died in a heartbeat.

2 Family members will testify. They'll  
3 describe their injuries and establish their severity.  
4 Medical examiners will testify. They'll establish the  
5 blunt force trauma from the blunt force impact.

6 A young man named Greg Nizewicz will testify.  
7 He will tell you he is a friend of the defendant.  
8 He'll tell you how he met the defendant on the late  
9 afternoon of Friday, July 1st. They met at a bar,  
10 House of Brews, he saw the defendant consume six beers  
11 while together that late Friday afternoon.

12 A young woman named Tracy Sodikoff will  
13 testify. She will tell you she too was a friend of the  
14 defendant; she too met the defendant that Friday. She  
15 met him that Friday night at a house party in Merrick,  
16 not far from the Meadowbrook Parkway. She too will  
17 tell you she saw the defendant consume alcoholic  
18 beverages that Friday. She saw him consume Irish car  
19 bombs. These are drinks with a mixture of whiskey,  
20 Bailey's Irish Cream and Guinness. She never saw the  
21 defendant leave the party that night. She never saw  
22 the defendant say good night to anyone.

23 A 28-year-old waitress named Elizabeth Serwin  
24 will testify. She will tell you she was on her way  
25 home that early Saturday morning. She had worked at a

## Opening - People

1 restaurant in Syosset. Yet she was on her way home to  
2 Long Beach. She was driving southbound along the  
3 southbound center lane of the parkway, and had her  
4 lights on, south of Merrick Road when she saw oncoming  
5 headlights. When she realized those headlights were  
6 being driven right at her, she veered across the  
7 parkway onto the shoulder to avoid an immediate  
8 collision. She hit her car horn three times to alert  
9 the driver. The vehicle, the pickup truck, kept coming  
10 at a high rate of speed. The driver never swerved,  
11 never wavered, never reacted to Ms. Serwin's headlights  
12 or horn in any way. She will tell you she noticed two  
13 other cars, headlights on, pulled off onto the shoulder  
14 of the road behind hers.

15 A 38-year-old Verizon employee, Mr. Shields,  
16 will testify. He'll tell you he too was out on the  
17 Meadowbrook Parkway at approximately 2 o'clock in the  
18 morning. He too was going southbound in the southbound  
19 center lane of the parkway, headlights on, south of  
20 Merrick Road, when he noticed oncoming headlights.  
21 Those headlights were approaching northbound along the  
22 southbound center lane. Mr. Shields moved over into  
23 the right-hand lane and began flashing his headlights  
24 and blaring his car horn to alert the driver. The  
25 vehicle, the pickup truck, just kept coming, high rate



## Opening - People

1 of speed. The driver never swerved, the driver never  
2 wavered, the driver never reacted to those headlights  
3 or car horns in any way.

4 A 34-year-old film producer, Joseph Caruso  
5 will testify. He too was on his way home at 2 o'clock,  
6 early Saturday morning. He too was driving southbound  
7 along the southbound center lane of the parkway,  
8 headlights on, just south of Merrick Road, when he  
9 noticed oncoming headlights. His initial reaction was  
10 to drift slightly to his left. When Mr. Caruso drifted  
11 slightly to his left, he noticed that the oncoming  
12 headlights appeared to be slightly to Mr. Caruso's  
13 left. Mr. Caruso veered across the parkway on the  
14 shoulder road to avoid an immediate collision. The  
15 vehicle, the pickup truck, just kept coming at a high  
16 rate of speed. The driver never swerved, never  
17 wavered, the driver never reacted to Mr. Caruso's  
18 headlights in any way. Mr. Caruso will tell you he  
19 noticed another car pulled off onto the shoulder of the  
20 road. That car was in front of his.

21 A 19 year old Villanova student named Matthew  
22 Sussingham will testify. He too was on his way home at  
23 2 o'clock that early Saturday morning. He was driving  
24 southbound along the right southbound lane of the  
25 parkway, headlights on, onto an exit ramp to Sunrise

## Opening - People

1 Highway when he saw the pickup truck come up over  
2 northbound along the southbound center lane. The  
3 driver never swerved, never wavered, never reacted to  
4 Mr. Sussingham's headlights in any way; just kept  
5 coming right past Mr. Sussingham at a high rate of  
6 speed.

7 A 38-year-old pastor named Steed Davidson,  
8 from a Freeport United Methodist Church, will testify  
9 he too was on his way home at 2 o'clock that early  
10 Saturday morning. He was driving family members home  
11 in a Nissan Maxima automobile. He too was driving  
12 southbound along the southbound center lane of the  
13 parkway, headlights on, about 55 miles an hour,  
14 approaching the Babylon Turnpike overpass, when he  
15 noticed the headlights of a limousine coming up from  
16 behind him along the left southbound lane.

17 The limousine proceeded to pass the Reverend  
18 Davidson about 60 miles an hour. It was then that the  
19 Reverend noticed oncoming headlights northbound along  
20 the southbound parkway. The limousine began to move  
21 over toward the right into the southbound center lane  
22 where Reverend Davidson was. The oncoming headlights,  
23 the headlights of a pickup truck, moved slightly to the  
24 right and engaged the limousine in a massive head-on  
25 collision. At some point the limousine made contact

## Opening - People

1. with the Reverend Davidson's Nissan Maxima, that spun  
2. out 180 degrees, finally coming to a rest.

3. You are actually going to see what the  
4. Reverend Davidson saw. You are actually going to see  
5. what Christopher Tangney saw inside the limousine,  
6. you're going to actually see what Stanley Rabinowitz  
7. saw in the last moments of his life.

8. You're going to learn there was a video  
9. camera installed in the limousine recording. You are  
10. actually going to see the defendant's headlights just  
11. as the Reverend Davidson saw it. You are actually  
12. going to see the defendant's pickup truck coming around  
13. the bend along the Babylon Turnpike overpass, just as  
14. Christopher Tangney saw.

15. You're going to actually receive the pickup  
16. truck move slightly to the right and slam head on into  
17. the limousine, just as Stanley Rabinowitz saw, the last  
18. thing he ever saw. You were going to see this  
19. collision for yourselves.

20. Police officers, including New York State  
21. Trooper Patrick Siegler and Danny O'Hare will testify.  
22. They will tell you how they responded to the scene of  
23. the collision and the devastation that they found.  
24. They'll describe massive front-end crush damage to both  
25. the limousine and the pickup truck. They'll describe

## Opening - People

1 observations that they made of the occupants of the  
2 limousine.

3 They'll tell you how they found the defendant  
4 pinned behind the steering wheel of the pickup truck,  
5 and the police were able to pry him loose and bound him  
6 on a stretcher and got him over to a nearby ambulance.

7 Police Officer Tim Nolan of the Freeport  
8 Police Department will tell you how he tried to speak  
9 with the defendant then, how he kept asking the  
10 defendant's name, leaning closer and closer to the  
11 defendant to have him say Martin. How he kept asking  
12 where the defendant was coming from, leaning closer and  
13 closer to the defendant, until he finally understood  
14 that he was saying Long Beach. How he detected a  
15 powerful odor of an alcoholic beverage on the  
16 defendant's breath.

17 Trooper O'Hare will tell you how the  
18 defendant was rushed to the trauma room of the Nassau  
19 County Medical Center, where doctors and nurses  
20 surrounded him and cared for him.

21 At 2:45, early Saturday morning, a nurse drew  
22 samples of the defendant's blood, which Trooper O'Hare  
23 sealed in tubes, sealing the tubes in a blood kit,  
24 which eventually was sent to the New York State Police  
25 toxicology lab.

## Opening - People

1           The toxicologist will tell you how she  
2           received the sealed tubes of the defendant's blood,  
3           unsealed those tubes, analyzed the blood and determined  
4           that the defendant had a blood alcohol content of .28,  
5           more than three times the legal limit, just after the  
6           collision.

7           Investigator Mike Harris of the State Police  
8           will testify, and he will describe a conversation with  
9           the defendant at the medical center, about a half day  
10          after the collision. He'll tell you how the defendant  
11          told him he had been driving the pickup truck at the  
12          time the collision; he had consumed a fifth of Old Parr  
13          Scotch whiskey before driving the pickup truck, and how  
14          he had been in what he described as a self-destruct  
15          mode on the night of the collision.

16          In short, the People will prove beyond a  
17          reasonable doubt, any reasonable doubt, that the  
18          defendant kept drinking that night until he was highly  
19          intoxicated; how he went out and drove the pickup truck  
20          anyway; he wound up driving it the wrong way against  
21          oncoming traffic; and how he kept driving it the wrong  
22          way; how he drove right at oncoming headlights, forcing  
23          drivers to chicken out, forcing drivers to veer out of  
24          his path to avoid deadly head-on collisions; until he  
25          came around the bend, out from beneath the Babylon

## Opening - LaMagna

1 Turnpike overpass, and adjusted slightly to the right  
2 and engaged the limousine in the devastation head-on  
3 collision, Mr. Rabinowitz simply could not avoid,  
4 killing Mr. Rabinowitz and Katie, and in so doing  
5 showing a depraved indifference and utter lack of care  
6 for their precious human lives, and the human lives of  
7 anyone else out on the southbound Meadowbrook Parkway  
8 around the time of the collision. He just didn't care  
9 enough whether those people lived or died.

10 In short, the People will prove beyond any  
11 reasonable doubt that the defendant is guilty as  
12 charged of all of the counts of the indictment,  
13 including Murder in the Second Degree, depraved mind  
14 murder; Assault in the First Degree, depraved mind  
15 assault and; Reckless Endangerment in the First Degree.

16 Thank you, again for your time and a  
17 attention.

18 THE COURT: Mr. LaMagna.

19 MR. LaMAGNA: As reasonable people we all  
20 know what murder is, and as reasonable people we all  
21 know who murderers are. The evidence will show that  
22 this is not a case of murder, and that this young man  
23 is not any murderer.

24 Good morning, ladies and gentlemen of the  
25 jury. Your Honor, counsel for the prosecution,

## Opening - LaMagna

1 Mr. Martello and Mr. Heidgen.

2 As you know, this portion of the trial is  
3 called the opening statement. And, of course, as the  
4 Judge had just told you, it is not evidence. And what  
5 we just heard from the prosecution, again, is not  
6 evidence. The purpose of the opening statement really  
7 is for the government, and the prosecutor, the  
8 prosecution, to articulate to you what they hope to  
9 prove and exactly how they intend or will attempt to  
10 prove each and every charge that they brought against  
11 Mr. Heidgen, and ask you to consider those charges.  
12 This is because they, and only they, have the burden of  
13 proof in this case. Before you, the jury, can even  
14 reach a verdict of guilty they must prove each and  
15 every element of the charges they have brought beyond a  
16 reasonable doubt.

17 The defense, unlike the prosecution, doesn't  
18 have to even give an opening statement, because we have  
19 no burden of proof. That burden falls squarely on the  
20 shoulders of the prosecution, and shall remain there  
21 for the course of the trial.

22 However, as you will see, we are nevertheless  
23 prepared to present evidence. We will question and at  
24 times aggressively cross-examine the government  
25 witnesses. We'll question their motives, we will

## Opening - LaMagna

1 question their biases, we will question whether or not  
2 any of these government witnesses have changed their  
3 story, have changed their testimony to fit and to  
4 conform to the prosecution's unusual theory in this  
5 case of depraved indifference murder. We will explore  
6 inconsistencies about their evidence and about their  
7 witnesses. We will expose mistakes made during the  
8 course of their investigation and we will question the  
9 quality and sufficiency of their evidence.

10 And, most importantly, ladies and gentlemen,  
11 we'll question their conclusions, especially as it  
12 relates to the state of mind of Martin Heidgen on July  
13 2nd 2005.

14 We'll make sure that this trial is about all  
15 the evidence; not just the piece of evidence that the  
16 prosecution wants you to hear, because it fits their  
17 agenda. We are going to make sure that this trial is  
18 about the truth, the truth concerning the circumstances  
19 leading up to this unintentional, yet tragic accident;  
20 the truth as to how this tragic accident occurred; and,  
21 most importantly, the truth about this young man's  
22 state of mind on that night. That is the critical  
23 issue in this trial.

24 We will make sure that your determination, as  
25 we discussed in jury selection, is about the evidence,



## Opening - LaMagna

1 not about emotion; it is not about sympathy and  
2 certainly not about vengeance. This must be about  
3 justice and an accountability and responsibility, but  
4 accountability and responsibility for what it is that a  
5 person may be accountable and responsible for, nothing  
6 more.

7 This isn't about making examples of anybody  
8 or scapegoating anybody to get a headline in the paper.  
9 A person's life is on the line here.

10 Now, we heard Mr. Hayden state what he hopes  
11 the evidence will prove. Many of what -- much of what  
12 Mr. Hayden said we have no quarrel with; we agree. A  
13 terrible tragedy of immeasurable proportions occurred  
14 in this case: Two people lost their lives, a seven  
15 year old child, and many people were injured as a  
16 result of a car crash. We know and we would not be  
17 human if we didn't feel for them, but this is a trial  
18 about not what ultimately happened, we know that; this  
19 is going to be a trial about how it happened, under  
20 what circumstances it happened, and what was the state  
21 of mind of Marty Heidgen at the time that this  
22 occurred. What we heard from the prosecution is a  
23 theory. And just like pounding a square peg into a  
24 round hole that theory of depraved mind murder simply  
25 will not fit.

## Opening - LaMagna

1 Put simply, ladies and gentlemen: The  
2 evidence will prove that on July 22nd 2005, a  
3 convergence of tragic circumstances all came together  
4 and made this perfect storm of tragic events that  
5 collectively came together and caused this tragic  
6 accident. Not as the prosecution so desperately wants  
7 you to believe, the sudden and remarkable  
8 transformation of a 24-year-old young man's mind from  
9 being happy, excited, in a pleasant mood that night,  
10 into a depraved mind murderer. That is what the  
11 evidence will prove did not happen, because that is the  
12 truth.

13 Every single person who was with Marty  
14 Heidgen that day, that evening, that night, will tell  
15 you that he was in a perfect mood, he was happy, he was  
16 engaging; not depressed in the least bit. And like all  
17 of his other friends were excited about this upcoming  
18 Fourth of July weekend that they had plans for.

19 The evidence will prove that the state of  
20 mind of Mr. Heidgen was perfect that day. He was  
21 happy. Anything but depraved. And, again, that is  
22 what the truth is, that is who he is, and that is who  
23 he was that night, and that is why the extreme charge  
24 of murder in this case should never have been charged  
25 and cannot be proven in this case.

## Opening - LaMagna

1 Remember, in order for the prosecution to  
2 prove the case of murder in this unintentional  
3 accident, in addition to proving, if they do, that  
4 Mr. Heidgen was intoxicated, they have to prove that  
5 his mind was that of a depraved person.

6 Pay close attention to the evidence as they  
7 present it to you. I want you to ask yourselves as  
8 they present evidence, witness after witness, ask  
9 yourselves are there inconsistencies between their own  
10 witnesses? Are there inconsistencies between their own  
11 experts? Did the government continue to hire expert  
12 after expert until they finally got an expert willing  
13 to give an opinion that fit their theory? Ask  
14 yourselves did their experts change their opinions to  
15 fit this unusual theory of depraved mind murder.

16 For example, pay close attention to one of  
17 their experts in particular, Wade Bartlett. Ask  
18 yourselves why he would change his original testimony  
19 in the report and then changed his report to support  
20 it.

21 Now, Mr. Hayden mentioned some oral  
22 statements apparently made by Mr. Heidgen. Again, ask  
23 yourselves were these statements that you're going to  
24 hear, are they accurate, are they factually correct,  
25 was he lying, was he lied to by the police prior to

## Opening - LaMagna

1 giving his statement, is his blood alcohol level  
2 accurate. Are there reasonable alternatives to the  
3 main issue of his state of mind as to whether it was  
4 depraved. You'll ask yourselves is there a single  
5 witness that they will bring you that will corroborate  
6 that theory, and the answer is no. Every single person  
7 who was with him will tell you that that is absolutely  
8 not the truth about his state of mind.

9 Ultimately, ladies and gentlemen, the  
10 evidence will prove that many factors unintentionally  
11 converged to cause this terrific and terrible accident,  
12 none of which was a depraved mind.

13 You will hear that Marty moved to New York  
14 just eight months before this occurred from Arkansas  
15 after he graduated college. That he moved in with his  
16 parents, or his mother in Valley Stream, and he worked  
17 in Manhattan. He commuted. He was unfamiliar with the  
18 roadways on Long Island. And you will hear that this  
19 group of friends that he had made had plans for that  
20 weekend, beginning with a party at the Goldman  
21 residence the night of this accident.

22 You will hear that the Goldman residence is  
23 in North Merrick. That is significant because where  
24 their house is is off the Meadowbrook Parkway by the  
25 Babylon Turnpike exit.

## Opening - LaMagna

1                   You will hear that at 9:40 that night Amanda  
2 Goldman gave Marty Heidgen directions to her house off  
3 the Meadowbrook Parkway at Babylon Turnpike, because he  
4 didn't know his way around.

5                   You'll hear that on his way to that very  
6 party, after getting directions, he got lost getting to  
7 the house in that area. He called Amanda Goldman. She  
8 gave him further instructions and he got to the party.

9                   You will hear that when he arrived at the  
10 party he was not drunk; he didn't drink an entire  
11 bottle of scotch. You will hear that he was in a  
12 perfect mood, happy, excited about the weekend, like  
13 everybody. No more, no less. You'll hear that at the  
14 party they were laughing, they were joking, they were  
15 even dancing to music and, yes, they were drinking.  
16 There is no question about that.

17                   But you will hear that at 1:30, or  
18 approximately 1:30, Marty left to go home, back to  
19 Valley Stream. And you will hear, just like when he  
20 was driving from Valley Stream to the Goldman residence  
21 in Merrick, off of the Meadowbrook Parkway, off of the  
22 Babylon Turnpike exit, as he was going back home he got  
23 lost again. And you will see evidence that Mr. Heidgen  
24 again, just like he did before when he got lost going  
25 to the Goldman residence, he called Amanda at 1:45

## Opening - LaMagna

1 because he was lost again. Fifteen minutes before this  
2 accident occurred.

3 You will hear that Amanda, who threw the  
4 party, didn't pick up the phone, and Marty had to  
5 navigate his way home, and he got lost and he got  
6 confused.

7 And you will hear from accident  
8 reconstruction experts and highway safety experts that  
9 the Meadowbrook Parkway is poorly constructed and  
10 unsafe in that it allows cars to get on that parkway in  
11 the wrong direction. You will hear at that time of  
12 night, at 2 o'clock in the morning on the south  
13 Meadowbrook Parkway, it is dark, it is empty and there  
14 is no exits.

15 Unfortunately, he did get on the wrong side  
16 of the parkway. It wasn't that it was for miles,  
17 because the salient point that is going to be in this  
18 case, is from the first time that a car passed him  
19 until the time of the accident was approximately only  
20 point eight miles, less than a minute. All of this was  
21 happening that fast.

22 And you will hear that Marty did take  
23 self-corrective measures. You will hear that he  
24 reduced his speed when he was seeing a car pass him,  
25 saying he didn't know if it was him that was wrong or

## Opening - LaMagna

1 the other guy. You will hear that he reduced his speed  
2 from 70 miles an hour, 65 miles an hour to 30, all in  
3 that short period of time. And you will also hear that  
4 point one mile from the accident the whole area is  
5 point .08 miles.

6 As he is driving, as he is slowing down, he  
7 was looking for signs. And you will see on the  
8 Meadowbrook Parkway point one mile from where this  
9 terrible accident occurred, there is a sign on the  
10 Meadowbrook Parkway facing the wrong way. So an errant  
11 driver driving north on the southbound lanes would see  
12 a sign facing them on the right-hand side, where you  
13 would normally look for signs to get off, adding  
14 further confusion to what was happening that night.

15 You see, ladies and gentlemen, this was a  
16 tragedy of immeasurable proportions. And,  
17 unfortunately, we can't change the result. But we can  
18 determine how it happened and why it happened, and  
19 under what circumstances it happened. The evidence  
20 will prove that corrective measures were taken;  
21 unfortunately, too late.

22 Ladies and gentlemen of the jury, what the  
23 evidence will show is that there are times when a  
24 multitude of circumstances, unintentional and without  
25 malice, are created by mistake and irresponsibility

Opening - LaMagna

1 that come together in such a way that they create an  
2 atmosphere where a terrible tragedy occurred, and that  
3 is what happened in this case. But that does not  
4 amount to murder, and it does not amount to a depraved  
5 indifference to human life.

6 And that is why, ladies and gentlemen, at the  
7 end of this case you will find the defendant not guilty  
8 of murder or any related charge to show a depraved  
9 indifference to human life.

10 Thank you.

11 THE COURT: Mr. Hayden.

12 MR. HAYDEN: The People call Trooper Patrick  
13 Siegler.

14 COURT OFFICER: Step up. Remain standing,  
15 raise your right hand and face the clerk.

16 P A T R I C K S I E G L E R, a  
17 witness called on behalf of the People, having been  
18 first duly sworn by the Clerk of the Court, was  
19 examined and testified as follows:

20 THE CLERK: Please be seated.

21 In a loud voice, state your name, spelling  
22 your last name, shield and command for the record the  
23 record.

24 THE WITNESS: Trooper Patrick Siegler,  
25 S-I-E-G-L-E-R, New York State Police, Brentwood, Shield



Trooper Siegler - Direct - Hayden

1 349.

2 THE CLERK: Thank you. Please take a seat.

3 DIRECT EXAMINATION

4 BY MR. HAYDEN:

5 Q Good morning, Trooper.

6 A Good morning.

7 Q How long have you been a member of the New York

8 State Police?

9 A Approximately six and one-half years.

10 Q Have you covered the scenes of motor vehicle  
11 crashes?

12 A Yes, I have.

13 Q How many crash scenes have you covered?

14 A In six years, hundreds.

15 Q Do you know a man named Martin Heidgen?

16 A I do.

17 Q Please briefly describe him.

18 A White male, 20s, dark hair.

19 Q Do you see Martin Heidgen in this courtroom  
20 today?

21 A I do.

22 Q Please point him out to the jury, and describe  
23 for the record what he is wearing today.

24 A Seated at the table to my left, centered between  
25 counsel. He has a checked tie, white shirt.

Trooper Siegler - Direct - Hayden

1 MR. HAYDEN: Let the record reflect, your  
2 Honor, that the witness has indicated the defendant  
3 Martin Heidgen.

4 THE COURT: The record will so reflect.

5 Q I'm directing your attention to the early morning  
6 of Saturday, July 2nd of 2005.

7 Were you working then?

8 A Yes, I was.

9 Q What was your assignment that morning?

10 A I was assigned to patrol Post 9812, which  
11 includes the Meadowbrook Parkway.

12 Q How were you dressed then?

13 A In uniform.

14 Q Using a motor vehicle?

15 A Marked State Police vehicle.

16 Q Were you working with a partner?

17 A I was working with Trooper Brunz.

18 Q How was Trooper Brunz dressed?

19 A In uniform.

20 Q Describe the weather that morning?

21 A It was warm and humid.

22 Q Did you respond that morning to the vicinity of  
23 the southbound lanes of the Meadowbrook Parkway, just north  
24 of the Babylon Turnpike overpass?

25 A Yes, I did.

Trooper Siegler - Direct - Hayden

1 Q Where is the Babylon Turnpike overpass with  
2 relation to Sunrise Highway?

3 A It is north of Sunday Highway.

4 Q Where is the Babylon Turnpike overpass with  
5 relation to Merrick Road?

6 A It is north of Merrick Road. Two exits north.

7 Q When did you arrive along the southbound  
8 Meadowbrook Parkway just north of the Babylon Turnpike  
9 overpass?

10 A Approximately 2:10 a.m.

11 Q Describe the circumstances under which you  
12 responded there?

13 A Received a dispatch from S.P. Farmingdale  
14 communications to check for an accident, Meadowbrook Parkway  
15 northbound in the vicinity of Merrick Road.

16 Q Did you see a limousine when you arrived there?

17 A Yes, I did.

18 Q Where was the limousine?

19 A The limousine was facing southbound, center lane  
20 of the Meadowbrook Parkway, just north of the Babylon  
21 Turnpike overpass.

22 Q Describe for the jury any observations you made  
23 of the front of the limousine?

24 A Front end of the limousine was completely  
25 destroyed. Heavy front-end impact.

Trooper Siegler - Direct - Hayden

1 Q Did you see a man named Stanley Rabinowitz in the  
2 driver's compartment of the limousine?

3 A Yes.

4 Q Describe any observations you made of Stanley  
5 Rabinowitz?

6 A The driver's compartment was completely crushed  
7 around him. All I could see of Mr. Rabinowitz was part of  
8 his left arm and his left hand.

9 Q Did you see a woman named Jennifer Flynn with  
10 remains of her daughter in the vicinity of the limousine?

11 A Yes, I did.

12 Q Where was Jennifer Flynn?

13 A She was in the center median, sitting against the  
14 guide rail.

15 Q Did you look inside the limousine?

16 A Yes.

17 Q Tell the jury what you saw when you looked inside  
18 the limousine?

19 A Inside there were several people, all with  
20 various serious injuries, crying out in pain.

21 Q Did you see a pickup truck in the vicinity of the  
22 limousine?

23 A Yes.

24 Q Where was the pickup truck?

25 A Pickup truck was also southbound Meadowbrook

Trooper Siegler - Direct - Hayden

1 Parkway, mostly in the left-hand lane, facing south.

2 Adjacent to the limousine more or less.

3 Q Describe any observations you made of the front  
4 of the pickup truck?

5 A The front end of the pickup truck was also  
6 heavily damaged. The frame of the vehicle was bent.

7 Q Did you see the defendant inside the pickup  
8 truck?

9 A Yes, I did.

10 Q Where was the defendant?

11 A He was behind the wheel of the pickup truck,  
12 sitting mostly upright.

13 Q Did you see anyone else inside the pickup truck?

14 A No.

15 Q Describe any observations you made of the  
16 defendant when you first saw him behind the steering wheel  
17 of the pickup truck?

18 A He was sitting mostly upright, his eyes were  
19 open. He had a small cut under his chin that I could see.

20 Q Where were you while you were making those  
21 observations of the defendant?

22 A To the left of the pickup truck, to the left of  
23 the driver's side of the pickup truck.

24 Q Did you see a man named Michael Ierardi when you  
25 arrived at the scene of the collision?

Trooper Siegler -- Direct - Hayden

1 A Yes.

2 Q Who is he?

3 A He is a New York City court officer who was on  
4 his way home from work when he came upon the accident scene  
5 just after it happened.

6 Q Did you speak to him?

7 A Yes. He was standing in the roadway waving a  
8 flashlight.

9 Q When did you speak with Mr. Ierardi?

10 A As soon as I arrived.

11 Q Did you eventually speak with a man named Steed  
12 Davidson at the scene of the collision?

13 A Yes.

14 Q Who is he?

15 A Mr. Davidson was the operator of a Nissan Maxima,  
16 which was the third vehicle involved in the collision.

17 Q When did you speak with Steed Davidson?

18 A Approximately twenty minutes after two.

19 Q Did you see Reverend Davidson's Nissan Maxima?

20 A Yes, I did. The Maxima was facing northbound,  
21 mostly in the right lane of the Meadowbrook Parkway south.  
22 His vehicle had been struck at or about the same time that  
23 the pickup and the limousine had collided. His vehicle spun  
24 and was facing northbound in the southbound, mostly right  
25 lane.

Trooper Siegler - Direct - Hayden

1 Q South of the Babylon overpass?

2 A South of the overpass, correct.

3 Q The other vehicles were north of the overpass?

4 A Correct.

5 Q Describe any observations you made of Reverend

6 Davidson's Maxima?

7 A The Maxima had some damage to the left rear

8 quarter panel, left rear door.

9 Q Was the defendant removed from the pickup truck?

10 A Yes.

11 Q Where were you while the defendant was being

12 removed from the pickup truck?

13 A At the time I was finishing up speaking with

14 Mr. Davidson I believe.

15 Q Where was the defendant placed after being

16 removed from the pickup truck?

17 A Placed on a stretcher and loaded into a Nassau

18 County Police ambulance.

19 Q Did you join him there?

20 A Yes, I did.

21 Q Describe any additional observations you made of

22 the defendant after you joined him in the ambulance?

23 A I got in the ambulance. He was lying on his

24 back, looking up at the ceiling. I observed his eyes to be

25 glassy and blood shot. He had a strong odor of alcohol on

Trooper Siegler - Direct - Hayden

1 his breath.

2 Q Did you notice any injury to the defendant while  
3 you were with him in the ambulance?

4 A He had a small laceration under his chin, and he  
5 was wearing a neck brace.

6 Q Did you try to speak with the defendant?

7 A I had asked him his name.

8 Q What did he say?

9 A He did not respond. He did not look at me or  
10 make any eye contact.

11 Q Any further effort to speak with him?

12 A I leaned in again and I asked him his name a  
13 second time, to which he did not respond as well.

14 Q Anything further?

15 A No.

16 Q Did the defendant respond to anything said to him  
17 in your presence?

18 A No.

19 Q Did the defendant ever look at your direction  
20 while you were with him?

21 A No.

22 Q Did you ever see the defendant look at anyone's  
23 direction while you were with him?

24 A No.

25 Q Did the defendant utter an unintelligible sound



Trooper Siegler - Direct - Hayden

1 while you were with him?

2 A No.

3 Q Did you leave the ambulance?

4 A Yes.

5 Q Describe the circumstances under which you left  
6 the ambulance?

7 A I left the ambulance, was speaking to Trooper  
8 Knapp, and decided that Trooper O'Hare was going to  
9 accompany Mr. Heidgen to the hospital with a blood kit for  
10 the purposes of securing a blood sample as he was under  
11 arrest for DWI.

12 Q Did Trooper O'Hare join the defendant in the  
13 ambulance?

14 A Yes.

15 Q Was the ambulance driving away?

16 A Yes.

17 Q At approximately what time?

18 A Two-thirty-three a.m.

19 Q Did you recover the defendant's wallet that  
20 night?

21 A Yes.

22 Q When did you recover the defendant's wallet?

23 A After the ambulance departed for the hospital I  
24 still did not know who this person was. I returned to his  
25 vehicle, tried to find some kind of document that belonged

Trooper Siegler - Direct - Hayden

1 to him in order to identify him.

2 I Went inside towards, to where the pickup was,  
3 shined my flashlight inside. I was not able to get around  
4 it because the inside of the pickup truck was heavily  
5 damaged. I shined my light inside and saw a wallet on the  
6 floor of the driver's floorboard, and found a broken piece  
7 of a fishing pole.

8 I retrieved the wallet and opened it up and  
9 inside was a photo license, an Arkansas photo license, which  
10 appeared to be one in the same of the person who was taken  
11 in the ambulance and on his way to the hospital under  
12 arrest.

13 Q How long were you at the scene at the crash that  
14 Saturday?

15 A I was at the scene probably until at least 8  
16 o'clock in the morning. Six hours or so.

17 Q Were photographs taken at the scene of the crash?

18 A Yes.

19 MR. HAYDEN: Your Honor, may I have this  
20 group of photographs, which have been marked 1A through  
21 12A shown to the witness, please?

22 THE COURT: Yes.

23 Q Please take a look at those.

24 Do you recognize those photographs?

25 A Yes.

Trooper Siegler - Direct - Hayden

1 Q Are those photographs taken at the scene of the  
2 crash?

3 A That's correct.

4 Q Are those photographs fair and accurate  
5 representations of the way that the crash scene appeared  
6 while you were there that morning?

7 A Yes.

8 MR. HAYDEN: Your Honor, at this time may the  
9 witness please step down and take a look at these  
10 enlarged photographs marked for identification?

11 THE COURT: Are they identical to these but  
12 enlarged?

13 MR. HAYDEN: That's correct, your Honor.

14 THE COURT: Is it your intention to put them  
15 in evidence?

16 MR. HAYDEN: It is, your Honor.

17 THE COURT: Perhaps we can show these to  
18 counsel, and see if there is an objection to them  
19 coming into evidence.

20 MR. HAYDEN: Yes, your Honor.

21 MR. LaMAGNA: Your Honor, it is my  
22 understanding that they want to introduce all of them.

23 THE COURT: That is what Mr. Hayden just  
24 said, yes.

25 MR. HAYDEN: That's correct, your Honor.

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1 MR. LaMAGNA: Judge, I would object to the  
2 cumulative nature of them. One in particular. I don't  
3 know if you want to hear the objection now.

4 THE COURT: Actually we have been at this  
5 about an hour now. Why don't I give the jury a five or  
6 ten-minute break.

7 Ladies and gentlemen, I gave you the  
8 admonitions right before the opening statements.  
9 Please don't talk about the case. See you in a few  
10 minutes.

11 (Whereupon, the jury exited the courtroom.)

12 MR. LaMAGNA: Do you want the witness present  
13 for the discussion?

14 MR. LaMAGNA: I guess maybe it is better that  
15 he is not.

16 THE COURT: Officer, would you mind stepping  
17 down.

18 (Whereupon, the witness exits the courtroom.)

19 THE COURT: What is the objection?

20 MR. LaMAGNA: Judge, there is cumulative  
21 nature to some of these photographs showing pretty much  
22 the same scene. One photograph in particular, the  
23 limousine shows the photograph of the extraction that  
24 was either by the fire department or EMS, when they  
25 ripped open the limousine.

Trooper Siegler - Direct - Hayden

1 THE COURT: How is that marked?

2 MR. LaMAGNA: This is 7A.

3 THE COURT: So the specific objection is to  
4 7A, and the general objection to the rest is it is  
5 cumulative? Can I see them, please?

6 MR. LaMAGNA: That's correct.

7 THE COURT: Your argument for the admission  
8 of 7A, Mr. Hayden?

9 MR. HAYDEN: Your Honor, for one thing it  
10 shows the location of Katie Flynn's body inside of the  
11 vehicle. It is undercover. It is not inflammatory.  
12 This shows the location of the body. In addition, it  
13 helps establish the extensive nature of the injuries in  
14 that police and emergency personnel had to rip away the  
15 side of the vehicle just to get to these people, to get  
16 them out without causing further damage to them.

17 THE COURT: The objection is overruled. I'm  
18 allowing all of the photographs. Gentlemen, we'll take  
19 a five-minute break as well and resume in a few  
20 minutes. Mark them.

21 (Whereupon, the items referred to received  
22 and marked People's Exhibits 1A through 12A in  
23 evidence.)

24 THE COURT: Put the witness back on the  
25 stand.

Trooper Siegler - Direct - Hayden

1 THE CLERK: Case on trial, Indictment 1910N  
2 of 2005, People versus Martin Heidgen.

3 People ready?

4 MR. HAYDEN: Ready, your Honor.

5 THE CLERK: Defendant ready?

6 MR. LaMAGNA: Defendant ready.

7 THE CLERK: Defendant is present at this  
8 time, your Honor.

9 THE COURT: All right. We'll await the jury  
10 and we'll continue.

11 THE CLERK: I remind you you are still under  
12 oath. You can take a seat.

13 COURT OFFICER: Jurors entering.

14 (Whereupon, the jury entered the courtroom,  
15 and upon taking their respective seats, the following  
16 occurred:)

17 THE CLERK: Jurors are present and seated,  
18 your Honor.

19 THE COURT: The objection was overruled. The  
20 photographs are in evidence.

21 MR. HAYDEN: Your Honor, with the Court's  
22 permission may Trooper Siegler step down, take a look  
23 at these enlarged photographs, and confirm that they  
24 are fair and accurate enlargements of 1A through 12A in  
25 evidence?

Trooper Siegler - Direct - Hayden

1 THE COURT: Yes.

2 Q Please step down, Trooper. Please take a look at  
3 those enlargements.

4 Trooper, are those enlargements 1B through 12B  
5 fair and accurate enlargements of the photographs you  
6 already identified and that have been placed into evidence,  
7 1A through 12A?

8 A Yes, they are.

9 MR. HAYDEN: Your Honor, with the Court's  
10 permission I would like to display each of the large  
11 enlargements of the photographs and at the same time  
12 have Ms. McCormick display the smaller photographs 1A  
13 through 12A, for the defense counsel, the defendant and  
14 for your Honor.

15 THE COURT: Any objection?

16 MR. LaMAGNA: No, Judge.

17 THE COURT: Yes.

18 MR. HAYDEN: May I proceed?

19 THE COURT: Yes.

20 Q Trooper, please step down in front of the jury.  
21 I am now displaying, your Honor, 1B in evidence.

22 Briefly describe what that is.

23 A That is the scene Meadowbrook Parkway southbound  
24 lanes. Here is the pickup truck. This is the limousine.

25 Q I am now placing 2B before the jury. What is

Trooper Siegler - Direct - Hayden

1 that?

2 A Another photo of the collision scene taken from  
3 the Babylon Turnpike overpass, taken in daylight. And you  
4 have the limousine and pickup truck southbound lanes of the  
5 Meadowbrook Parkway.

6 Q I am now showing 3B in evidence.

7 What is that?

8 A Once again, the collision scene, scene of the  
9 accident. Freeport Police personnel and Nassau County  
10 Police personnel and State Police members also at the  
11 collision scene.

12 Q I am now displaying 4B. What is that?

13 A That is the limousine. Front end is completely  
14 destroyed. You have the pickup and the front end is  
15 completely destroyed. And you can see the radiator.

16 MR. LaMAGNA: Objection.

17 THE COURT: Overruled.

18 Q Can you see Mr. Rabinowitz in that photograph?

19 A I cannot.

20 Q Where was Mr. Rabinowitz with relation to that  
21 photograph?

22 A This area here. It would be the driver's seat.

23 Q I am now showing 5B. What is that?

24 A Photo of the driver's side of the limousine. The  
25 left rear door is open. You can see slightly inside the



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1 passenger cabin.

2 Q This is 6B. What is that?

3 A The limousine. You can see part of the engine in  
4 this area. You can see one of the shots of the front left  
5 tire, and the Freeport fire truck in the background.

6 Q Can you see Mr. Rabinowitz in that photograph?

7 A You can see part of his shoulder and elbow.

8 Q That's toward the middle of the photograph?

9 A That is toward the middle of the photograph.

10 Q This is 7B. What is that?

11 A That is a photograph of the passenger side of the  
12 limousine. Passenger cabin area of the stretch limousine  
13 was cut away by the ESU officers in order to extricate the  
14 injured inside.

15 Q So the torn metal down the middle of the  
16 photograph was done by emergency people?

17 A Correct.

18 Q To get to the victims inside?

19 A Correct.

20 Q This is 8B. What is that?

21 A Photograph of the pickup truck on the Meadowbrook  
22 Parkway at the collision scene.

23 Q Where were you with relation to that photograph  
24 when you first made your observations of the defendant?

25 A I was just behind the door, near the wooden guide

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1 rail.

2 Q This is 9B. What is that?

3 A Another photograph of the pickup truck. You can  
4 see that the frame is bent heavily on the driver's side.  
5 The front end of the vehicle is facing mostly south and the  
6 rear of the vehicle is bent on an angle, the frame.

7 Q This is 10B. What is that?

8 A It is a photograph of the pickup truck. You  
9 could see mostly the right front end. And the passenger  
10 side is visible. And also a fishing tackle box falling  
11 outside of the pickup truck.

12 Q This is 11B. What is that?

13 A Photograph of the pickup truck showing mostly the  
14 driver's side of the pickup. You can see some of the front  
15 end. You can see the battery of the pickup truck. You can  
16 also see the air bag.

17 Q That is toward the middle of the photograph?

18 A Toward the middle.

19 Q This is 12B. What is that?

20 A Photograph of the Nissan Maxima operated by Steed  
21 Davidson. The vehicle is facing northbound in the  
22 southbound lanes, because it had been spun around after the  
23 collision with the limousine. Damage on the left rear  
24 quarter panel and driver's side door.

25 Q Once again, that is south of the Babylon Turnpike

Trooper Siegler - Cross - LaMagna

1 overpass?

2 A That's correct. This is actually -- this is the  
3 exit lane to Babylon Turnpike east. That would be the M7  
4 east lane.

5 Q Once again, the other vehicles were north of the  
6 Babylon Turnpike overpass?

7 A Yes.

8 Q Please retake the witness box.

9 MR. HAYDEN: Nothing further, your Honor.

10 Thank you.

11 THE COURT: Mr. LaMagna.

12 MR. LaMAGNA: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. LaMAGNA:

15 Q Good morning, Trooper.

16 A Good morning.

17 Q Trooper, as you know, my name is Stephen LaMagna.

18 I'm going to ask you just a couple of questions here this  
19 morning. If you don't understand a question please ask me  
20 to repeat it and I certainly will.

21 Trooper, you received a radio call to respond to  
22 an accident scene on the Meadowbrook Parkway; is that  
23 correct?

24 A That's correct.

25 Q And that was at approximately 2:06?

Trooper Siegler - Cross - LaMagna

1 A Approximately.

2 Q A.m.

3 A Yes.

4 Q That was on July 2nd 2005, correct?

5 A Correct.

6 Q And you had testified that as a trooper you have  
7 had experience in accident investigations; is that correct?

8 A Correct.

9 Q And you said there were hundreds of them; is that  
10 correct?

11 A I don't have an exact number.

12 Q I understand.

13 A But several a month times six years.

14 Q With respect to that experience have any of them  
15 been related to head-on collisions as well?

16 A Yes.

17 Q And out of those how many would you say were  
18 head-on collisions? Numerous?

19 A No, I would say a small percentage.

20 Q Were any of them on a parkway?

21 A Yes.

22 Q Or was this the first one?

23 A No. Nothing that I recall on this parkway, no.

24 Q Not on this parkway. In general, just as your  
25 experience.

Trooper Siegler - Cross - LaMagna

1 A Not on a parkway necessarily, but perhaps on an  
2 interstate or a state road.

3 Q Now, you arrived at the scene at what time,  
4 approximately?

5 A Two-ten a.m.

6 Q And you were with a partner, correct?

7 A Correct.

8 Q That was Eric Burns?

9 A Brunz.

10 Q Brunz, I'm sorry.

11 You said it was a warm and humid night; is that  
12 correct?

13 A Yes. It had rained earlier in the evening.

14 Q You were the first state troopers on scene?

15 A Correct.

16 Q And when you arrived at the scene you observed  
17 the two vehicles, correct?

18 A Yes.

19 Q Did you approach the Silverado first or did you  
20 approach the limousine first?

21 A The limousine.

22 Q And then you went to the Silverado?

23 A Yes.

24 Q At that time the window of the Silverado on the  
25 driver's side was open, correct?

Trooper Siegler - Cross - LaMagna

1 A On the driver's side, yes.

2 Q Did you speak to a Mr. Ierardi, if I'm  
3 pronouncing in right?

4 A Ierardi, I spoke to him prior to going to the  
5 vehicles. He was the first person we encountered on the way  
6 to the accident scene.

7 Q Did he tell you that he unrolled the window or  
8 did anything with respect to the door of that car?

9 A I don't recall.

10 Q At some point other troopers were coming to the  
11 scene; is that correct?

12 A Yes.

13 Q One of which would be Trooper Knapp; is that  
14 correct?

15 A Yes.

16 Q Trooper O'Hare, correct?

17 A Yes.

18 Q And you said at some point you observed  
19 Mr. Heidgen being extracted from his car; is that correct?

20 A Yes.

21 Q And you didn't aid in any of that; is that  
22 correct?

23 A No, I did not aid in it.

24 Q You did, however, help in getting Mr. Heidgen to  
25 a stretcher; is that correct?

Trooper Siegler - Cross - LaMagna

1 A No. I don't believe I participated in loading  
2 him onto a stretcher.

3 Q Did you participate in --

4 A No.

5 Q -- in anything?

6 A Of his extraction, no.

7 Q Nothing? Getting him into the ambulance?

8 A No. But I was present while he was being loaded  
9 into the ambulance.

10 Q So you observed that; is that correct?

11 A Yes.

12 Q And you observed the EMS put a neck brace on  
13 Mr. Heidgen; is that correct?

14 A Yes.

15 Q And then at some point you said you attempted to  
16 get some information from Mr. Heidgen; is that correct?

17 A Yes.

18 Q And was that in the ambulance or outside?

19 A Inside the ambulance.

20 Q So he was on the stretcher?

21 A Yes.

22 Q Neck brace on?

23 A Yes.

24 Q So when you say he was staring straight up, he  
25 was wearing a neck brace, correct?

Trooper Siegler - Cross - LaMagna

1 A Correct.

2 Q Now, at some point you testified that --  
3 withdrawn.

4 At some point you were notified that Trooper  
5 O'Hare was going to retrieve a blood kit from his car for  
6 the purposes of going with Mr. Heidgen to get --

7 A I was not notified that as someone telling me  
8 what was going to happen, it was discussed between myself  
9 and Trooper Knapp. Initially I was going to go to the  
10 hospital in the ambulance with the blood kit, but I chose to  
11 remain at the scene. Someone was needed to take my place in  
12 the ambulance and Troop O'Hare was chosen by myself and  
13 Trooper Knapp.

14 Q You actually were having a conversation with  
15 Trooper Knapp concerning who would be going with Mr. Heidgen  
16 for the purpose of ascertaining a blood sample, correct?

17 A Correct.

18 Q And at some point it was decided that Trooper  
19 O'Hare would be doing that, correct?

20 A Yes.

21 Q And were you present when Trooper Knapp told  
22 Trooper O'Hare to go get the blood kit; that he is the guy  
23 who is going?

24 A I don't recall if Trooper Knapp went to Trooper  
25 O'Hare. I don't recall if he was standing right there with



Trooper Siegler - Cross - LaMagna

1 us.

2 Q You were there when that as decided?

3 A I was at the ambulance while this was going on.

4 Q At some point Trooper O'Hare came to the  
5 ambulance where you were, correct?

6 A Yes.

7 Q And at that point he had a blood kit in his hand,  
8 correct?

9 A Yes.

10 Q At that point it was discussed that you were  
11 going to leave the ambulance, and Trooper O'Hare was going  
12 to go get into the ambulance?

13 A That was already decided, yes.

14 Q That's exactly what happened, correct?

15 A Yes.

16 Q O'Hare went into the ambulance with the blood  
17 kit, correct?

18 A Correct?

19 Q And he was going to go to the hospital with  
20 Mr. Heidgen to get the blood sample, correct?

21 A Correct.

22 Q Now, at some point it was decided to place  
23 Mr. Heidgen under arrest, correct?

24 A Yes.

25 Q And that was around 2:33; is that correct?

Trooper Siegler - Cross - LaMagna

1 A Correct.

2 Q That was approximately the same time that they  
3 left for the hospital, correct?

4 A Yes.

5 Q Nobody informed Mr. Heidgen that he was being  
6 placed under arrest?

7 A Nobody verbally communicated to him that he was  
8 under arrest, correct.

9 Q Now, after the ambulance had left to go to the  
10 hospital you went back to the car; is that correct?

11 A To the pickup truck.

12 Q To the Silverado?

13 A Correct.

14 Q And you said at some point that you shined your  
15 flashlight in there, and you saw a wallet, correct?

16 A Correct.

17 Q And, in fact, there was a broken fishing pole  
18 that you used to retrieve that wallet; is that correct?

19 A Yes.

20 Q That was around 2:35, 2:40?

21 A It was a couple minutes after the ambulance had  
22 left, yes.

23 Q So a few minutes from that you were able to  
24 retrieve the wallet that was in the car, correct?

25 A Yes.

Trooper Siegler - Cross - LaMagna

1 Q And you opened the wallet?

2 A Yes.

3 Q And the wallet revealed a license, among other  
4 things, correct?

5 A Correct.

6 Q And the license identified the driver of that  
7 Silverado; is that correct?

8 A That's correct.

9 Q And you looked at the photograph?

10 A Yes, I did.

11 Q And it matched Mr. Heidgen, correct?

12 A Yes.

13 Q So, within a few minutes of the ambulance leaving  
14 to go to the hospital you, at that point, knew the identity  
15 of the driver of that car, correct?

16 A Yes.

17 Q Martin Heidgen, correct?

18 A Yes.

19 Q Date of birth, correct?

20 A Yes.

21 Q Address, correct?.

22 A Uh huh.

23 Q And did you give that information to Trooper  
24 Knapp as well?

25 A At the point that that information was obtained

Trooper Siegler - Cross - LaMagna

1 by me Trooper O'Hare was already gone to the hospital.

2 Q I'm not asking you about O'Hare.

3 A Did I give that to that Trooper Knapp, I don't  
4 believe I did. I believe I gave that to Investigator  
5 Harris.

6 Q Was Harris already on the scene?

7 A Within a few minutes after the ambulance had  
8 left.

9 Q Do you recall what time Investigator Harris  
10 arrived?

11 A No, I do not.

12 Q When you retrieved this wallet and the identity  
13 of the driver, is it your testimony that you held it to  
14 yourself until Investigator Harris arrived, or did you  
15 disseminate that information among the other troopers you  
16 were working with?

17 A The other troopers that I was working with,  
18 either I had relayed to them by telephone the information  
19 that I got from the license, as they were at the hospital,  
20 and whether or not it was Trooper Knapp, I don't recall. .

21 Q Who did you notify at the hospital of that  
22 information?

23 A I believe it was Trooper Stafford.

24 Q And what time was that about?

25 A I don't recall. Probably within a half-hour or

Trooper Siegler - Cross - LaMagna

1 so.

2 Q Is it fair to say 2:40ish, 2:50ish; is that a  
3 fair amount of time?

4 A Again, I don't recall the exact time. It was  
5 within a short time after the ambulance had left.

6 Q And it was Trooper Stafford?

7 A He was one of my contact points at the hospital.

8 Q And you notified him about the identity of the  
9 driver of the Silverado, correct?

10 A Correct.

11 Q Now, it was shortly after the ambulance had left  
12 your presence, correct?

13 A Yes.

14 MR. LaMAGNA: One moment, your Honor.

15 THE COURT: Okay.

16 (Brief pause in proceedings.)

17 Q When you were in the ambulance you had testified,  
18 I don't know if it was today or previously, that the  
19 defendant was moaning. Is that correct?

20 A That's correct. He was making some light moaning  
21 sounds.

22 Q You noticed an injury to his chin, correct?

23 A Yes.

24 Q Did you notice any other injuries, any broken  
25 wrist or anything like that?

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1           A       No. Just he was wearing a neck brace, and as far  
2       as any internal injuries he may have had I did not know at  
3       that time.

4           Q       I understand. All you recall him doing was  
5       laying on the stretcher with the neck brace and moaning,  
6       correct.

7           A       Correct.

8                   MR. LaMAGNA: Your Honor, I have no further  
9       questions. Thank you.

10                   THE COURT: Redirect.

11       REDIRECT EXAMINATION

12       BY MR. HAYDEN:

13           Q       Describe the injury to his chin.

14           A       Small laceration underneath his chin.

15           Q       When you say, "small" what are you talking about?

16           A       It was a minor cut. He was not going to bleed to  
17       death from it.

18           Q       About what size was it?

19           A       Inch and-a-half.

20           Q       Was he bleeding from that injury?

21           A       Yes. He was bleeding.

22                   MR. HAYDEN: Nothing further, your Honor.

23       Thank you.

24                   MR. LaMAGNA: Nothing further. Thank you.

25                   THE COURT: Mr. Hayden.

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1 MS. McCORMICK: If you don't mind?

2 THE COURT: Ms. McCormick.

3 MS. McCORMICK: People call Ms. Jennifer  
4 Flynn.

5 COURT OFFICER: Step up, remain standing,  
6 raise your right hand, face the.

7 THE CLERK:

8 J E N N I F E R F L Y N N , a  
9 witness called on behalf of the People,  
10 having been first duly sworn by the Clerk of  
11 the Court, was examined and testified as  
12 follows:

13 THE CLERK: Please be seated.

14 State your name, spelling your last name for  
15 the record.

16 THE WITNESS: Jennifer Flynn, F-L-Y-N-N.

17 THE CLERK: Thank you. Please take a seat.

18 You can put your hand down.

19 DIRECT EXAMINATION

20 BY MS. McCORMICK:

21 Q Good morning, Mrs. Flynn.

22 A Good morning.

23 Q Could you tell the jury, please, how old are you,  
24 ma'am?

25 A Thirty-six -- 37.

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1 Q At the time of the crash how old were you then?

2 A Thirty-six.

3 Q Are you employed outside of the home Mrs. Flynn?

4 A No. I am a stay-at-home mother.

5 Q How many kids do you have?

6 A Four.

7 Q Could you tell the jury, please, their names and  
8 ages?

9 A Collin is two; Ammon is four, Grace is six and  
10 Kate is seven.

11 Q Mrs. Flynn, I'm going to ask you to think back to  
12 the events of Friday, July 1st 2005.

13 Do you remember that day?

14 A Yes.

15 Q Can you tell the jury what it is that was  
16 occurring on July 1st?

17 A We were at my sister's wedding. At about 1  
18 o'clock we all got in a limousine: My mother and father,  
19 myself, my husband, Kate and Grace and my cousin Heather, to  
20 drive to the Harrison House, which was a hotel where my  
21 sister was staying before the wedding. We got changed  
22 there.

23 And then just the girls and his party went to the  
24 Arboretum, Oyster Bay Arboretum, to take pictures. That was  
25 about three. At five we went to the Crescent Beach Club in



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1 Bayville, and took pictures on the beach and at the place.  
2 And but at that time my parents had met us, my husband, and  
3 my brother, and we took family photos of us and then her  
4 husband's family was there taking pictures.

5 About 7-ish was the actual wedding. They got  
6 married there. So my girls were the flower girls. I was  
7 the Maid of Honor. And they got married outside on the  
8 beach.

9 Q How was the weather that day, Mrs. Flynn?

10 A It was nice. We were outside. It was nice. I  
11 mean, the pictures, it was nice.

12 Q No rain that you recall?

13 A No.

14 Q Warm?

15 A It was hot, yes.

16 Q And in all respects how was the afternoon and the  
17 evening?

18 A It was beautiful. I mean, it was a wedding. My  
19 entire family was there. All of my cousins were there. It  
20 was Fourth of July weekend. At from parts of the place you  
21 could see from where we were fireworks that, you know, you  
22 can overlook and see. We danced. We ate. We hung out. It  
23 was great. I mean, it was a great day.

24 Q Did there come a time when the reception for the  
25 wedding ended?

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1 A Yes.

2 Q Can you tell the jury about what time the  
3 reception ended, if you remember?

4 A It started winding down toward 12:30. I took the  
5 girls to get changed so they would be comfortable to go home  
6 in sweats and a tee shirt. We danced a little bit more, and  
7 then the girls couldn't stay awake anymore. We put chairs  
8 together in the reception room, and they fell asleep at the  
9 tables, and then as the adults said their goodbyes, my  
10 father carried Kate and Neil, my husband, carried Grace, and  
11 we went outside.

12 There was, like, a place you could sit in this  
13 outside. There was, like, a bench, and you watched the cars  
14 roll up. And on the bench my dad was sitting with Kate  
15 sleeping, my mother. Neil was standing with Grace and I was  
16 standing, and we were waiting for our limo.

17 Q Mrs. Flynn, could I interrupt you for just a  
18 moment. Could you tell the jury, please, what is the name  
19 of your dad?

20 A Chris Tangney.

21 Q And your mom?

22 A Denise Tangney.

23 Q And your husband?

24 A Neil Flynn.

25 Q You were all together outside of the reception

Trooper Siegler - Redirect - Hayden

1 hall?

2 A We were all together outside of the reception  
3 hall waiting to go home.

4 Q How were you supposed to leave from that  
5 reception hall that night?

6 A Lisa and David reserved a car for us to go home.  
7 It was a limousine. But there were a couple of limousines  
8 that they also reserved for themselves, Dave's parents and  
9 other people that were going back to the hotel. We didn't  
10 want to go back to the hotel; we just wanted to go home.  
11 They had a limo reserved for us to take us back to town.

12 Q Mrs. Flynn, had you been drinking at the wedding  
13 that night?

14 A Yes.

15 Q You had a limousine reserved to take you and your  
16 family?

17 A Yes.

18 Q Did there come a time when you actually got into  
19 a limousine?

20 A Yes.

21 Q Could you describe for the jury how that  
22 happened?

23 A We waited. There was confusion as we were  
24 leaving, because they didn't know what limousine was for us,  
25 and Mr. Rabinowitz, the driver of the limousine, said he

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1 would take us because it wasn't, they didn't have it all  
2 straight how we were getting home. We had to wait a little  
3 bit outside before we got in.

4 Eventually Mr. Rabinowitz said he would take us.  
5 He came over, he introduced himself, and I grabbed, like,  
6 the table settings to put in the back of the limousine that  
7 we were taking with us.

8 My father, carried Kate and Neil carried Grace  
9 into the car. My mother and I were putting the stuff in the  
10 trunk of the car, like our bags we brought that day,  
11 flowers, settings and then we -- then my mother and I got  
12 in.

13 My husband was seated behind the driver, I was  
14 seated next to him, we were both facing the compartment of  
15 the limousine, Stanley, Neil, me. Mr. Rabinowitz, Neil, me.

16 Q Mrs. Flynn, if I could, would you be facing the  
17 direction that the limousine is traveling or are you facing  
18 backwards?

19 A We are facing backwards.

20 Q And your seat is running right behind the  
21 driver's compartment?

22 A Correct.

23 Q Please continue. I'm sorry.

24 A Kate is lying on the bench. So it is Neil, then  
25 there is this bench; Kate is here, her head toward where my

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1 dad is now sitting here, her legs toward Neil and she is  
2 asleep. In front of her on this side of the limousine is  
3 the bar. So it is me, Neil, Kate, my dad, my mother, the  
4 bar.

5 Q Mrs. Flynn, if I could try to clarify a couple  
6 more points with you on that.

7 Is there another bench that runs the same  
8 direction as your bench in the limousine?

9 A Yes. It just -- it is facing forward.

10 Q So the two benches face one another inside of the  
11 limousine?

12 A Correct.

13 Q Those two?

14 A Yes.

15 Q And that bench, the second bench, is at the back  
16 of the limousine and it would be between the passenger  
17 compartment and the trunk; is that correct?

18 A Yes. Yes.

19 Q And your mom and dad were back there?

20 A My mother, my father, Kate, Neil. And Grace is  
21 sleeping on me. I'm holding her this way and her legs are  
22 kind of on Neil.

23 Q The third bench in the limousine, does that bench  
24 run alongside of the limousine, so it is actually  
25 perpendicular to your bench and the bench that your parents

## Trooper Siegler - Redirect - Hayden

1 are on?

2 A Yes, it is.

3 Q Is that the bench where Katie was located?

4 A Yes.

5 Q And that bench was on the driver's side, inside  
6 the limousine; is that correct?

7 A Yes.

8 Q Across from Katie's bench, what is across from  
9 Katie's bench in the limousine?

10 A A bar.

11 Q And it is attached inside the limousine?

12 A Yes, it is.

13 Q So all four walls of the passenger compartment  
14 have either a bench or the bar against them?

15 A Yes.

16 Q And if you would just one last time for the jury  
17 please, where is everyone located within that limousine?

18 A The driver is driving; Neil, my husband, is  
19 directly behind him, looking out at the rest of the  
20 limousine. So it is the driver, Neil, me. This is the  
21 bench. Like the driver is here, driving. Then it is the  
22 bench behind it, which is Neil and myself. I'm holding  
23 Grace. Then here, is Kate and my dad and my mom. It is my  
24 dad, Kate, Neil and me and my mother.

25 Q Who entered the limousine first, Mrs. Flynn?

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- 1 A Neil and Grace.
- 2 Q Neil was carrying Grace?
- 3 A Neil was carrying Grace. Grace was asleep.
- 4 Q And then second?
- 5 A My father and Kate. And my dad handed Kate, who
- 6 was sleeping, off to Neil, and Neil put her in and seat
- 7 belted her in. She was asleep.
- 8 Q On that side bench?
- 9 A Yes. So she is lying down on the bench.
- 10 Q Now, you and your mom get into the limousine?
- 11 A Then my mom and I got into the limousine.
- 12 Q Door closes?
- 13 A Door closes.
- 14 Q What happens?
- 15 A And we drive toward home.
- 16 Q Do you know what time you actually left the
- 17 reception hall?
- 18 A About 1:30.
- 19 Q Was there anything eventful about your driving
- 20 from the reception hall to the point of the parkway?
- 21 A It was quiet. The compartment between us and
- 22 Mr. Rabinowitz was open. He wasn't really talking to us and
- 23 we weren't talking to him. We were all talking amongst each
- 24 other now and then. We were tired. We would have our eyes
- 25 closed and someone would say something and we would open

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1     them and comment, talk a little bit, and then we would close  
2     them and someone else would say something, and it was kind  
3     of that way as we were driving home.

4           Q     Mrs. Flynn, when you say that the compartment was  
5     open, was there a separation between the driver's  
6     compartment and the passenger compartment in the limousine?

7           A     Yes.

8           Q     Was that sort of a window or a piece of --

9           A     It was --

10          Q     -- wood?

11          A     It was like a Plexiglas window, and it was open.  
12     Had I wanted to ask Mr. Rabinowitz a question I would have  
13     been able to do that.

14          Q     Was there anything about the manner in which the  
15     car traveled down roadways, were you going fast, were you  
16     going slow, was there anything about that that you could  
17     tell the jury?

18          A     .. We were going -- it is like a windy road as you  
19     are leaving the Crescent Beach Club. That way was windy.  
20     For a little bit it seemed to me like we took a wrong turn.  
21     It was windy and we weren't going particularly fast, but it  
22     was windy.

23                   Then when you make it to the Northern State  
24     Parkway it is just a straight-away, so then we increased  
25     speed, and we just went straight until, you know, the



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1 Northern State hits the Meadowbrook.

2 Q You said that the reception hall is in Bayville.

3 Is that right?

4 A Yes.

5 Q And do you know what path, what road, path you  
6 were going to travel to go home that night?

7 A No. I know he eventually hit the Northern State  
8 and the Meadowbrook. I did not know the exit off from the  
9 Northern State or the name the road that winds up to the  
10 Crescent Beach Club.

11 Q Could you tell the jury, generally, where does  
12 your family live? Where is that, your home?

13 A We live in Long Beach, about an hour away from  
14 where we were supposed to be going.

15 Q So did there come a time that you were aware of  
16 the limousine entering the Northern State Parkway?

17 A Yes. Because it wasn't windy any longer. When  
18 it was windy it was a slower ride. And it was winding, and  
19 then when you hit the Northern State we increased speed, and  
20 it is just a straight road home. So there is no lane  
21 changing, there is just a straight path to our house.

22 Q Mrs. Flynn, you said that you guys were talking  
23 among yourselves in the limousine. Is that right?

24 A Yes.

25 Q The girls are sleeping?

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1 A The girls were sleeping.

2 Q What happened next?

3 A It was quiet. And then the car exploded. It was  
4 loud. It was -- it smelled. There was an incredible  
5 screeching stop. It threw me forward where I was able to  
6 use my foot to brace me against the bar to keep from losing  
7 Grace and myself. And my mother, who was sitting in front  
8 of me, flew sideways, diagonally to Neil. My father, who  
9 was sitting in front of Neil, flew sideways to me.

10 And when we finally stopped screeching and  
11 stopped moving, my father was suspended directly in front of  
12 me. He was in the air, wrapped just like where I am  
13 sitting. Here he is right here. He is suspended. His legs  
14 were mangled in the bar. And he just was up in the air.

15 And my mother had fallen onto Neil, where Neil  
16 was seated, still in, you know, that same spot sort of. My  
17 mother was lying on her -- her head was by his lap. Her  
18 legs were sideways into that aisle that you need to walk to  
19 to get to where my seat should be. There is like an aisle  
20 in between the bench and bar. She is kind of lying between  
21 him and the bar is kind of under my dad.

22 And then everything stopped. And then it was  
23 kind of sizzling, like a hissing sound, just a loud sound  
24 and smoke, and we stopped.

25 And I got up and I put Grace down. And I leaned

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1 toward my father, and I needed to push up to get out. So I  
2 leaned up toward him and stuck my hand where his legs should  
3 have been, but his foot had been cut off. And I got up. I  
4 moved around, because I had to now climb over my mom and my  
5 husband and Grace. I stepped on where Kate had been  
6 sleeping. And I said I'm going to get help. We are going  
7 to be okay. I am going to get help.

8 I opened the door and ran out into traffic.  
9 People at that time were not coming right at me. I was not  
10 worried that I would be hit, because there was a whole line  
11 of cars that had also seen the crash and stopped. So as I  
12 got out, I could see all of the oncoming traffic coming, but  
13 they were too far away from me, because there was a line of  
14 cars with people out staring at us. I screamed for help. I  
15 screamed that we were hurt. Call the police, and that they  
16 needed to hurry.

17 Then I got back into the car and when I left I  
18 had went out the side that I was sitting on, the passenger  
19 side door that went toward where the traffic was, because my  
20 car was on the left. When I climbed out, I went out that  
21 passenger door side, so then there would be three lanes of  
22 traffic. We were on the left lane of the parkway --

23 Q I'm sorry, the doors are in the back of the  
24 limousine?

25 A Yes.

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1 Q You exited the back passenger side?

2 A Correct.

3 Q And started to scream for help?

4 A To scream for help.

5 Q Before you left, Mrs. Flynn, was anybody talking  
6 in the limousine? Was anybody able to speak, other than  
7 you?

8 A My father was speaking to me. My mother and my  
9 husband were moaning. Grace was crying. And I didn't hear  
10 Kate.

11 Q What happens next, Mrs. Flynn?

12 A We -- I then got back into the car, and I said,  
13 "Where's Kate," you know, "Where's Kate." And I looked and  
14 she wasn't on the seat, and then I looked and I saw her head  
15 on the floor. So I -- it was -- she was sideways, as if her  
16 head was also looking out the passenger side and her hair  
17 was over her face. So I moved her thinking I would get all  
18 of her to pick her up. I thought she was unconscious, but  
19 it was just her head that was there. And I never saw her  
20 body. And I picked her up and I held her, and I placed my  
21 hand under her neck to keep everything together and I held  
22 her. And I stated to my father, and to the car, that Kate  
23 was dead. More as a statement than as a scream or anything.  
24 Kate's dead. And I said it more than once.

25 My father started saying, "No, not Kate. No, not

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1 Kate." My mother was still moaning and then saying, "This  
2 can't be." And Neil was saying, Katie Angel, Katie Angel  
3 and Katie Angel. And Grace was crying a murmur. Nothing  
4 loud. It was a quite car. And it was just quiet. I asked  
5 about the driver, and my father said, "The driver's dead,  
6 Jen."

7 And then I waited and waited and waited, and I  
8 held her and no one was coming. I put her down and got out  
9 again and I ran out into traffic again, and I started to  
10 scream for help, and it was all the same people so, you  
11 know, I knew they were calling but no one was coming.

12 I got back into the car and I picked her up and I  
13 held her. My dad and I talked some more and then I lifted  
14 the door open. When I came back in on the passenger side, a  
15 man and a woman came toward the door to see if we were okay.  
16 The man definitely wanted to do something for us. The woman  
17 told him to leave us alone we couldn't be moved. We  
18 couldn't be touched. And my father told them, I need to be  
19 cut out. Don't -- you can't touch us.

20 The guy was beside himself. He definitely wanted  
21 to come in and take people out and the woman was that voice  
22 of reason at that time, she said you can't, and my father  
23 clearly told them you can't touch us. Just call for help.  
24 Call for help.

25 And then we waited. And then a little bit later

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1 from behind me -- because now I'm watching this open door  
2 with those two people, and they walked away a little bit --  
3 from behind me, the other door opens so it would be the back  
4 door on the driver's side, and I am holding Kate, and I  
5 turned behind me and it was my uncle Michael.

6 He had been driving home from the wedding and  
7 came upon our crash. So he sees me and Kate and my father  
8 from where he is, he could see from that door angle just  
9 that. And my dad says, you know, Michael we are badly hurt.  
10 Michael takes me and Kate, and we walk over on the side  
11 off -- now, we are on the left side of the car, not by where  
12 all of the other people are, and I sit on the guardrail with  
13 Kate and I hold her and I watch, and my uncle goes into the  
14 limousine to try to help everybody.

15 From where I am sitting I could see the  
16 limousine. Because from where I am, I could see the door.  
17 I could see my father suspended and I could see my mother's  
18 legs, and my husband appears. He climbed out. And he is by  
19 the door and he is screaming for Kate, like not knowing that  
20 she had died. Just screaming that I got to get to Kate.  
21 And then he collapses.

22 So I am watching and then it seems that a couple  
23 more people come. A man, not a police officer, comes over  
24 to see if I am okay, and then runs away. And after that a  
25 couple more police officers could around and come and check

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1 on me and leave. There were not enough people at the site  
2 at that time to stay with me. They were attending to what  
3 was going on.

4 Q Mrs. Flynn, where were you physically located  
5 now? Were you at the side of the road on grass and by the  
6 exit, or in the middle of the road by the guardrail?

7 A I'm on the guardrail to the -- the limousine is  
8 here. I'm right here. And I could see from where I am  
9 sitting into the limousine.

10 Q Did there come a time when people helped?

11 A Yes. Then more people would come onto the crash,  
12 so they put an officer with me, and then another officer, so  
13 there were two of us at that time. There became more  
14 people. Someone got a blanket and covered us.

15 My uncle Michael would come back and forth to me  
16 every so often just to tell me, you know, we got Grace out,  
17 she is with your aunt Darlene. She is going to the  
18 hospital. We got Neil. They are going to take him to the  
19 hospital. Never like one large report, but every so often  
20 when they did something, he would show up and let me know  
21 what was going on.

22 Q About how long were you at the crash scene,  
23 Mrs. Flynn, after the crash?

24 A It seemed like an hour. And I watched -- I  
25 watched the car. I watched the lights, I watched the

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1 policemen, I watched the confusion, and then, and then they  
2 told me that, you know, they wanted me to leave.

3 I said I wanted to wait until everybody left,  
4 that I knew my family had gotten out okay, and everyone was  
5 going to the hospital. They got the truck to cut my father  
6 out. And then everybody was out. So that it was time for  
7 them to go to the hospital, so they came to me and they  
8 said, "It's time. Everybody is out. We got to go."

9 Q Did you go to the hospital, Mrs. Flynn?

10 A I started to cry, because I knew that I would  
11 never hold her again, and I got up and I went by stretcher  
12 to an ambulance to the hospital.

13 Q Mrs. Flynn, was Grace injured in the crash?

14 A Grace wasn't examined for a couple of hours when  
15 we were at the ER. It wasn't until about seven that they  
16 took her in for tests.

17 They determined that her spleen was torn and  
18 bleeding; that they needed to evaluate it and watch her.  
19 And we stayed -- I stayed with her in that pediatric  
20 Intensive Care Unit at Nassau County Medical Center for  
21 about four or five days, and then she was okay to go home.  
22 She wasn't allowed to do anything for a month. She couldn't  
23 do anything to jar her stomach, no jumping, no going up  
24 stairs. We pretty much had to keep her, like, watching TV  
25 or playing board games for at least a month.



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1 Q How about you, Mrs. Flynn, were you physically  
2 injured in the crash?

3 A They didn't treat me for it at the crash, but  
4 about six weeks later I had to go back and have my foot  
5 operated on, because when I braced it I broke it. So I had  
6 to go in and have surgery. And I wore a boot for, like, six  
7 weeks.

8 Grace and I went to group therapy for about eight  
9 months. I go to an individual person since then, where I  
10 was prescribed anti-anxiety and muscle relaxers, and I tried  
11 acupuncture.

12 Q Mrs. Flynn, how old was Grace -- excuse me, how  
13 old was Katie --

14 A Seven.

15 Q -- at the time of the crash?

16 A Seven.

17 Q Thank you.

18 MS. MCCORMICK: I have nothing further.

19 THE COURT: Mr. LaMagna.

20 MR. LaMAGNA: No questions.

21 THE COURT: Thank you. You may step down.

22 (Whereupon, the witness exits the courtroom.)

23 THE COURT: Due to the hour, ladies and

24 gentlemen, I think we will break until 2 o'clock.

25 Do not talk about the case. You know all of

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1 the admonitions I gave you just a short time ago.

2 Please be promptly back at 2 o'clock. See  
3 you at 2 o'clock.

4 (Whereupon, the jury exited the courtroom.)

5 THE CLERK: At this time the Court will take  
6 its luncheon recess.

7 (Whereupon, a luncheon recess held.)

8 o0o

9 (Continued on following page.)

10 o0o

11 A F T E R N O O N S E S S I O N

12 o0o

13 THE CLERK: Case on trial continues.

14 THE COURT: Would you produce the jury,  
15 please.

16 COURT OFFICER: Jury entering.

17 (Whereupon, the jury entered the courtroom,  
18 and upon taking their respective seats, the following  
19 occurred:)

20 THE CLERK: Case on trial continues.

21 Indictment 1910 of 2005 People versus Martin Heidgen,  
22 People ready?

23 MR. HAYDEN: People ready.

24 THE CLERK: Defendant ready?

25 MR. LaMAGNA: Defendant is ready.

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1 THE CLERK: Defendant is present, your Honor,  
2 and the jurors are seated.

3 THE COURT: Thank you. Welcome back, ladies  
4 and gentlemen.

5 Next witness, please.

6 MR. HAYDEN: Neil Flynn.

7 COURT OFFICER: Step up. Remain standing,  
8 raise your right hand and face the clerk.

9 N E I L F L Y N N, a witness called  
10 on behalf of the People, having been first  
11 duly sworn by the Clerk of the Court, was  
12 examined and testified as follows:

13 THE CLERK: You may put your hand down.  
14 Staple, spell your last name for the record.

15 THE WITNESS: Neil Flynn, F-L-Y-N-N.

16 THE CLERK: Thank you. Please take a seat.

17 DIRECT EXAMINATION

18 BY MR. HAYDEN:

19 Q Good afternoon, Mr. Flynn.

20 A Good afternoon, sir.

21 Q How old are you?

22 A Thirty-seven.

23 Q What is your occupation?

24 A I'm a lawyer.

25 Q What type of law do you practice?

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1 A Civil litigation. Personal injury, contract  
2 disputes, labor law.

3 Q Do you know a woman named Jennifer Flynn?

4 A My wife.

5 Q Do you know a man named Christopher Tangney?

6 A Jen's dad, my father-in-law.

7 Q Do you know a woman named Denise Tangney?

8 A My mother-in-law.

9 Q Do you know a young girl named Grace Flynn?

10 A My daughter.

11 Q How old was Grace on July 2nd of 2005?

12 A She just turned five in April.

13 Q Did you know a young girl named Katherine Flynn?

14 A Still do.

15 Q Do you call her Katie?

16 A My oldest daughter.

17 Q Is Katie dead?

18 A She is.

19 Q How old was Katie when she died?

20 A Seven and-a-half.

21 Q I'm directing your attention to around 2 o'clock  
22 on the early morning of Saturday, July 2nd of 2005. Were  
23 you have riding in a limousine being driven by Stanley  
24 Rabinowitz then?

25 A I was.

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1 Q Describe the limousine.

2 A It was a black stretch, late model. I think it  
3 was a Lincoln. There were two bench seats that ran  
4 perpendicular to the length of the car: One back-to-back  
5 with the driver's seat; one at the back of the limo facing  
6 the one that was back-to-back with the driver's seat. There  
7 was a bench seat that ran perpendicular the length of those  
8 two seats, and the length of the limo on the driver's side.  
9 And on the passenger side, on the side of the limo there  
10 was, like, a bar, a dry bar, where you could put ice and  
11 drinks, and I guess decanters and things.

12 Q Where were you coming from then?

13 A We were coming from up on the north shore. My  
14 sister-in-law had gotten married that day and the ceremony  
15 and the reception were up, I believe, in Bayville.

16 Q When had the ceremony taken place?

17 A Early evening. It was still light out, sunset.  
18 It was beautiful. It was really nice. They got married  
19 right on the beach at the reception hall. They had the  
20 altar built and it was an outdoor ceremony. They set up  
21 chairs and everything. Jen was the Matron of Honor, and my  
22 little girls were the flower girls.

23 Q Was there a reception after the ceremony?

24 A Before and after. We had gone earlier in the  
25 day. I had to go out there early with them because my

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1 daughters and wife had to be in pictures and things like  
2 that during the day, so we left around lunch time from Long  
3 Beach.

4 We were living with my in-laws at the time  
5 because my house was being renovated. We were building new  
6 rooms for the girls and my sons. And we all left from my  
7 in-laws' house. And we separated. My wife and the girls  
8 went to the reception hall to take photos, and things like  
9 that, and then I met up with them later. And I was there  
10 for the tail end of the photographs. And then there was a  
11 ceremony and then the cocktail hour and reception.

12 Q Where was the reception?

13 A It was at the same place where the wedding took  
14 place. I don't know, I don't know the name of it, to tell  
15 you the truth. Boat club or marina, something like that.  
16 Right on the water on the north shore. I had been there a  
17 year before actually for a friend's wedding, beautiful  
18 place. You could look out over the water on the inside, and  
19 actually take your food and drinks out on the deck. And  
20 there was a little beach where the girls played, where they  
21 were picking up shells and things like that during the day.

22 Q Briefly describe your recollection of the  
23 reception?

24 A It was great. My sister-in-law married into a  
25 family that we had known since we are children. I know my

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1 wife, since we are about eight, and we all went to high  
2 school together. And Dave, my sister-in-law's husband, is  
3 first cousins to a family that lives in town with us, and we  
4 have known them for forever. There were dozens, if not  
5 more, friends, as well as all of our family there.

6 The food was great, plenty to eat and drink.  
7 Whatever you wanted. The ceremony was beautiful. It was  
8 right at sunset on the beach. My girls were gorgeous,  
9 dressed in the little versions of the gowns that the wedding  
10 party had, and they loved it.

11 I remember at one point I told them you can have  
12 as much as you want to eat and drink. Whatever you want.  
13 It is a party. Have fun. And then, you know, we danced  
14 with them. I remember holding both of them and dancing  
15 around. And they were playing with their older cousins.  
16 They were out on the beach at times. It was really nice.  
17 It was a great wedding.

18 Q Did you have anything to drink that day?

19 A Yeah. It was a wedding.

20 Q What did you drink?

21 A Beer.

22 Q How much?

23 A I don't know. Quite a bit. It was a long day.

24 I got there at lunch time. I don't know how many.

25 Q Describe your tolerance for alcohol?

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1           A       I like beer. I could have quite a few and not be  
2       bothered by it too much. It was a long day so. Plus I was,  
3       I was with family, interacting, taking pictures, dancing.  
4       It is not like I was sitting at the bar pounding beers  
5       throughout the course of the day. I probably had ten or  
6       twelve, but it was over nine or ten hours.

7           Q       When did the limousine leave the reception?

8           A       It was -- it wound down about 1 o'clock. My  
9       recollection, I don't even think I knew what time it was  
10      then, but from what I learned afterwards it was some time  
11      between one and one-thirty.

12          Q       Describe the circumstances under which the  
13      limousine left the reception?

14          A       Well, Kate and Grace, after we had danced for a  
15      while, got real tired. And I put them down on the chairs.  
16      We shoved the chairs together at the tables and they fell  
17      asleep. And then we decided to go.

18                 And Dave and Lisa had hired cars for us to get  
19      back. We have two sons also who didn't attend. They were  
20      young then. They are young now. They were one and three,  
21      and we wanted to get home to them. So, we decided not to  
22      stay over, like a lot of the guests did, and we were going  
23      home. So Dave and Lisa had arranged for a limo to take us  
24      back to Long Beach.

25                 And we went outside. There was a little area



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1 where they have a valet parking stand, with a little portico  
2 over the exit door and we sat there for a few minutes. I  
3 don't know if the car wasn't there or none of the drivers  
4 had been informed they were going to Long Beach, they all  
5 the thought they were going to the hotel. There was a delay  
6 when we were sitting out on the bench, and it got to be  
7 where other people were leaving, and Jen's uncle Michael  
8 drove by at one point and offered us a ride, which we turned  
9 down, because it was too crowded. He had his four kids and  
10 wife in his truck, and it would have been uncomfortable, so  
11 we said no. And we waited.

12 And then at some point Stanley Rabinowitz, the  
13 man I now know to be Stanley Rabinowitz, came up and between  
14 him and the other limo drivers, decided he would take us  
15 down to Long Beach.

16 Q Where was the limousine going then?

17 A We were going back to my in-laws' house. We had  
18 been staying there for a little while, and my house still  
19 wasn't ready yet. We were under construction. We were  
20 living with my in-laws at the time, which were going back to  
21 Long Beach, West Walnut Street.

22 Q Where were you sitting inside of the limousine?

23 A Directly behind Mr. Rabinowitz. I was  
24 back-to-back, facing the rear of the vehicle. I was on the  
25 driver's side, next to my wife and my daughter Grace.

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1 Q Who else was in the limousine with you?

2 A Kate and my in-laws. Kate was on the bench seat,  
3 asleep; and my in-laws were facing me and my wife and my  
4 daughter. Chris was directly in front of me, and Denise was  
5 next to him, to my left, his right.

6 Q Was your seat belt buckled?

7 A I don't remember. I thought it was. Jen said it  
8 wasn't. I don't know.

9 Q Describe Katie's position inside of the  
10 limousine?

11 A Chris had handed her in to me. Kate and Grace  
12 were both asleep when we got in. I think I put Grace on the  
13 same seat I was sitting when we first got in. Chris handed  
14 Kate in. Grace was sort of awake. She was sitting up, a  
15 little groggy, doing that fake asleep thing kids do. Kate  
16 was out cold. I laid her down on the bench. I put seat  
17 belts, I think I put both, on. It may have been one. I'm  
18 not sure.

19 Q Describe your state of mind as you were on your  
20 way home then?

21 A We were kind of floating. It was a long,  
22 beautiful day. You know, like I said, I had a couple of  
23 beers. I had a great time. I saw friends I hadn't seen in  
24 a long time. It was a beautiful ceremony.

25 I really -- I get along with my in-laws. I like

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1     seeing them. Jen's cousin's, aunts and uncles. Like I  
2     said, my kids, it was probably the best day of their lives,  
3     Katie said to me, this is the best day of my life when I  
4     told her she could have all of the soda she wanted. It was  
5     great. We were all coming down from, coming down from a  
6     big, big celebration, relaxing and looking forward to  
7     getting home and getting to bed.

8           Q     What were you doing as you were riding in the  
9     limousine at around 2 o'clock that early Saturday morning?

10          A     Reflecting on the day a little bit, talking about  
11     a few things that had happened, talking about the ceremony,  
12     who we saw, you know, trading anecdotes about who we had  
13     spoken to, things like that.

14                I was probably teasing Grace a little bit. She  
15     was still kind of awake, fooling around with her. Then I  
16     started to nod off. We got lost.

17                This area on the north shore is very, like my  
18     wife said, the roads are twisty and winding and overhung  
19     with trees. It is almost like being in the country.

20                At some point I think that the driver got lost.  
21     It took longer than it should have to get where we were  
22     going. I started closing my eyes myself. I was nodding  
23     off.

24           Q     What happened as you were riding in the limousine  
25     at around 2 o'clock that early Saturday morning?

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1           A       My world exploded. Came to an end. I was -- I  
2       believe I was asleep, and I believe I was knocked  
3       unconscious when the defendant crashed into us. I woke up  
4       and the first thing I remember was smelling smoke, and I  
5       tasted blood in my mouth. And I heard my wife saying over  
6       and over again, "Neil, Katie's dead. Neil, Katie's dead."  
7       And I said, "No, she is not dead. She is just hurt real  
8       bad. We'll get help." And she said, "No. She is dead."

9                   And then I don't know if I -- well, at that point  
10      my in-laws were right on top of me. My father-in-law was  
11      suspended in the middle of the limousine. His legs were  
12      jammed up against the passenger side of the limousine, and  
13      his head was against the roof, and his back was against the  
14      driver's side in the middle of the car hanging above the  
15      ground.

16                  And my mother-in-law was right on top of me, sort  
17      of underneath him. And I thought my wife was still -- I was  
18      in the car, I thought they she was next to me when she was  
19      speaking to me. I was still with Grace. And I don't know  
20      if I passed out again, or if things just merged together,  
21      the next substantive thing I remember, besides hearing Jen  
22      screaming and smelling the smoke and tasting the blood, was  
23      Jen's uncle Michael, Chris' brother, coming into the car.  
24      And I saw him, sort of over Chris, and he came in and Chris  
25      said, "My legs are broken. Michael, don't move me. My legs

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1 are broken."

2 And then Michael went away, and like Jen said, it  
3 seemed to take a long time. Nobody was coming. Nothing  
4 happened. I don't know, again, if I passed out again, or if  
5 I was awake the whole time. I couldn't really see a lot.  
6 It was dark and what lights I could see seemed really  
7 bright. And they were flashing in my eyes. And it was  
8 difficult to discern things.

9 So at -- and I decided I still, I guess I knew  
10 Kate was dead, but I didn't want to believe it. And nobody  
11 was coming to help us. So I had to get help for her.

12 So I crawled underneath my in-laws and I couldn't  
13 move my legs, so I had to pull myself with my arms to the  
14 back of the car, and as I was going Grace said, "Daddy,  
15 where are you going?" And, like I said, I thought Jen was  
16 still in the car. I said, "Grace, I'm going to get help.  
17 Stay there with mommy." But her mother wasn't in the car,  
18 with her anymore. She was kind of by herself. And I pulled  
19 myself towards the front of the car, and I knew Kate had  
20 been on the bench seat, and when I got to the middle of the  
21 car the bar was crushed in, it was bent down. I thought  
22 maybe she was stuck under it. I tried to push it up but I  
23 couldn't move it. So then I reached under it, but I didn't  
24 feel her. I have kept crawling. I was dragging myself to  
25 the back of the car. And I -- the door was open on the

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1 passenger side of the back, and I hung out and I started  
2 yelling, "Somebody please help my Katie. Somebody please  
3 help Katie."

4 And then at some point a cop or a fireman came  
5 and they pulled me out, and I kept telling them, "Help  
6 Katie. Don't worry about me." But they put me on a  
7 stretcher and they put me in the ambulance and they took me  
8 to South Nassau Hospital.

9 Q Was your back injured as a result of this crash?

10 A Yes. The defendant broke two of my vertebrae  
11 when he crashed into us, crushed my lumbar, number one and  
12 two vertebrae; broke my nose; he collapsed one of my lungs;  
13 he damaged my heart, so they had to put me in the cardiac  
14 unit for about two weeks; broke a bunch of my ribs; split  
15 in, my eye was torn open; my mouth is ripped open. I still  
16 have a scar. Every time I move my tongue I feel a bump in  
17 my mouth. I had two compression fractures of the vertebrae.  
18 He also ruptured two of my discs, two herniated discs in my  
19 spine, and he damaged my -- did something to my liver, I  
20 really don't know, lacerated it or bruised it or something  
21 like that.

22 Q How about your lungs?

23 A One of them was collapsed. They had to give me  
24 breathing treatments. I don't think it was punctured by the  
25 broken rib, but it was collapsed. I couldn't really breathe

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1 on my own. I to go through breathing therapy the first two  
2 weeks I was in the hospital. And I was bedridden because of  
3 the broken back. I couldn't walk or anything. But the lung  
4 reinflated after a period of time, and I was able to breathe  
5 normally.

6 Q Describe any treatment you received for the  
7 injury to your back and discs?

8 A Well, I was confined to South Nassau Hospital for  
9 about two weeks, and I was stuck in the bed. I didn't get  
10 to see my wife for about a week. She was in the hospital  
11 with Grace, and my in-laws were at the another hospital. So  
12 I had friends that came in, and my relatives would shuttle  
13 back and forth between the different hospitals.

14 I could move my legs, but it hurt to do it. I  
15 wasn't paralyzed, but it was just real painful. And I had  
16 extensive nerve damage because of the herniated discs that  
17 prevented me from using my legs normally.

18 So I was confined there for about two weeks, and  
19 they consulted with orthopedic surgeons, and things like  
20 that, and they determined that I probably need surgery.

21 I was released from there to a rehabilitation  
22 center in Long Beach, where I spent about a week. The last  
23 day I was at South Nassau Hospital I got up and walked  
24 around the nurses station on a walker. But when I left they  
25 kept me in a wheelchair for a while and I went to an

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1 intensive physical therapy rehabilitation center, where I  
2 alternated between the wheelchair and crutches.

3 They helped me walk on crutches, and they were  
4 able to get me up on crutches to go to my daughter's  
5 funeral. And after about a week there I went home, well, to  
6 my in-laws' house, not home.

7 And I was in constant pain, intractable. It  
8 wasn't any better than the first day it happened. I was on  
9 all kinds of drugs when I was at South Nassau. I was on  
10 I.V. pain killers. I was doped up the whole time. Then  
11 they took me off that when I was in the rehabilitation  
12 center, and I got oral pain killers, and a bunch of medicine  
13 for my heart, because of the damage he had done to it.

14 And things -- and a bunch of other drugs, I don't  
15 know what they were. My blood pressure sky rocketed after  
16 the crash, and I'm on high blood pressure pills.

17 So then after I was, I was in Long Beach, and I  
18 got released and went home, they sent me to physical  
19 therapists a couple times to the house. I couldn't do  
20 anything. I was still on the crutches. I had to take a  
21 chair into the shower and wash with a brush. I couldn't  
22 even get dressed, couldn't sleep in a bed. Ultimately I  
23 went to see another doctor. I went to see a spine surgeon  
24 in the city, and he took one look -- the guy they sent me  
25 from South Nassau was a little equivocal, he wasn't sure



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1 what he wanted to do and I got a second opinion, and this  
2 guy took one look at the x-rays or the MRI and he said, you  
3 could get surgery now or go to physical therapy for a year  
4 and then surgery. And I went for a third opinion and the  
5 doctor said the same thing.

6 So I got surgery about the middle of August at  
7 Lenox-Hill Hospital. I was in there for another week. I  
8 had to wear a brace. They gave me increasingly bigger  
9 bulkier braces, a plastic brace that went up to my neck,  
10 down to my waist. I had to wear that for six months after  
11 the surgery.

12 They did what is called a discectomy on the  
13 herniated disc and they tried to fix the fractured  
14 vertebrae, the crushed lumbar vertebrae, by injecting rubber  
15 cement into the empty space. It didn't work. They couldn't  
16 get it in there. I continued to treat with physical therapy  
17 three times a week.

18 I go to psychotherapy once a week and see my  
19 surgeon every few months. The last time was in June. He  
20 referred me out for MRIs and more x-rays, and things I  
21 haven't had the energy to do.

22 He have said once he reads the films we will be  
23 able to determine if I need more surgery, or if they can  
24 treat it with some other method. But I may need another  
25 operation.

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1           And now I take -- I'm getting by with the  
2   physical therapy. I take Vicodin for the pain, I'm on  
3   anti-depressants, and I still take the high blood pressure  
4   medication because of the stress, grief and anxiety. It  
5   keeps my blood pressure high.

6           Q       Describe any treatment you received for the  
7   damage to your heart?

8           A       They just kept me under observation. I was in  
9   the Cardiac Care Unit for the entire time I was at South  
10   Nassau. And I heard different things. They said I had a  
11   heart attack, and then they said it was just arrhythmia.  
12   They didn't do anything except give me medication. I took  
13   medication while in South Nassau. I was on medication. And  
14   then for a period of time after I got released, that was one  
15   of the pills when I got out of the hospital, I had maybe  
16   half a dozen prescriptions that they gave me. Now I'm down  
17   to four. There were probably six or seven when I was on it  
18   originally, at least one I know was to treat my heart.

19          Q       Describe any treatment you received for your  
20   broken nose?

21          A       They didn't do anything for the nose. I could  
22   get surgery I guess down the road. But my physical injuries  
23   are the least of my problems. I don't really know what I'll  
24   do.

25          Q       How about your broken ribs?

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1           A       Again, they heal on their own. There is no  
2 treatment for broken ribs. They just hurt.

3           Q       Was Christopher hospitalized as a result of the  
4 crash?

5           A       Yes, but not with me, until we were both  
6 transferred to Long Beach together.

7           Q       Describe any observations you made of Christopher  
8 while you were together in Long Beach Memorial?

9           A       He is ruined. He is a shell of himself. He  
10 bursts into tears. The first time I looked at him all he  
11 said was, "We did everything right. How did this happen?"  
12 He was in a wheelchair for months. He was hurt real bad.  
13 Lost a ton of weight. He is emotionally fragile.

14                   He was the go-to guy in his family. Always. And  
15 now he is just a different person. He is completely shot.

16           Q       How about Denise?

17           A       She was hurt bad too. She had a bunch of  
18 surgeries. She is in a ton of pain. They both limp around.  
19 They hobble around. They are young people. They both just  
20 retire. They hobble around. They are both crippled. She  
21 is like him; she walks like a penguin.

22                   MR. HAYDEN: I have nothing further, your  
23 Honor. Thank you.

24                   THE COURT: Mr. Martello.

25 CROSS-EXAMINATION

N. Flynn - Cross - Martello

1 BY MR. MARTELLO:

2 Q Good afternoon, Mr. Flynn. I promise I will be  
3 very brief. Just a couple of questions.

4 Mr. Hayden had said that, had asked you that you  
5 practice law. You are an attorney. Do you practice in  
6 Nassau County?

7 A Yes.

8 Q How long have you practiced in Nassau County as  
9 an attorney?

10 A Five years.

11 MR. MARTELLO: Nothing further, your Honor.

12 THE COURT: Redirect?

13 Mr. HAYDEN: No, your Honor.

14 THE COURT: Thank you.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: You are welcome.

17 (Whereupon, the witness exits the witness  
18 stand.)

19 THE COURT: Mr. Hayden, your next witness.

20 MS. McCORMICK: Your Honor, the People call  
21 Denise Tangney.

22 COURT OFFICER: Step up. Remain standing,  
23 face the clerk and raise your right hand.

24 D E N I S E T A N G N E Y, a  
25 witness called on behalf of the People,

D. Tangney - Direct - McCormick

1                   having been first duly sworn by the Clerk of  
2                   the Court, was examined and testified as  
3                   follows:

4                   THE CLERK: You can put your hand down.  
5                   State your name, spelling your last name for the  
6                   record.

7                   THE WITNESS: Denise Tangney, T-A-N-G-N-E-Y.

8                   THE CLERK: Thank you. Please take a seat.

9                   MS. MCCORMICK: May I inquire?

10                  THE COURT: Please.

11       DIRECT EXAMINATION

12       BY MS. MCCORMICK:

13                  Q       Good afternoon, Mrs. Tangney,

14                  A       Good afternoon.

15                  Q       Mrs. Tangney, can you tell the jury, please, how  
16       old are you, ma'am?

17                  A       Fifty-seven.

18                  Q       Do you have kids?

19                  A       Yes. I have three.

20                  Q       Can you tell us their names and their ages,  
21       please?.

22                  A       My youngest daughter is Lisa, she is 32; Thomas  
23       is 36; and Jennifer is 37.

24                  Q       Mrs. Tangney, I'm going to ask you to think back  
25       to July 1st of 2005. Could you please tell the jury what